# MONTANA ADMINISTRATIVE REGISTER

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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-9000.

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BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rule I pertaining to Grizzly Bear Demographic Objectives for the Northern Continental Divide Ecosystem and the transfer of ARM 12.9.103 | ) ) ) ) ) ) | NOTICE OF PUBLIC HEARINGS ON PROPOSED ADOPTION AND TRANSFER |

TO: All Concerned Persons

1. On September 18, 2018, at 6:30 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at Heritage Hall at Great Falls College-MSU, 2100 16th Avenue S., Great Falls, Montana, to consider the proposed adoption and transfer of the above-stated rules.

On September 19, 2018, at 6:30 p.m., the commission will hold a public hearing at Conrad High School, 308 South Illinois, Conrad, Montana, to consider the proposed adoption and transfer of the above-stated rules.

On September 26, 2018, at 6:30 p.m., the commission will hold a public hearing at the Holiday Inn Downtown, 200 S. Pattee Street, Missoula, Montana, to consider the proposed adoption and transfer of the above-stated rules.

On September 27, 2018, at 6:30 p.m., the commission will hold a public hearing at the Arts and Technology Building at Flathead Valley Community College, 777 Grandview Drive, Kalispell, Montana, to consider the proposed adoption and transfer of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 7, 2018 to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I GRIZZLY BEAR DEMOGRAPHIC OBJECTIVES FOR THE NORTHERN CONTINENTAL DIVIDE ECOSYSTEM (1) Upon delisting from the Endangered Species Act, management of the grizzly bear and its habitat in the Northern Continental Divide Ecosystem (NCDE) will be guided by the Conservation Strategy for Grizzly Bears in the Northern Continental Divide Ecosystem (NCDE Conservation Strategy). The department and federal land management agencies will endorse and commit themselves to the NCDE Conservation Strategy by entering

into a memorandum of understanding detailing their agreement to implement it. The department will be a signatory to the implementation memorandum.

(2) When and so long as the NCDE Conservation Strategy is in effect, the department and the commission shall, within their lawful authority to do so, maintain the recovered status of the grizzly bear in the NCDE by implementing interagency cooperation, population and habitat management and monitoring, and other provisions of the NCDE Conservation Strategy in accordance with the responsibilities described therein.

(3) Specific to population management in the NCDE, as described in the NCDE Conservation Strategy, the commission specifically adopts the following demographic objectives. The department shall:

(a) maintain a well-distributed grizzly bear population within the demographic monitoring area as described in the NCDE Conservation Strategy and maintain the documented presence of females with offspring in at least 21 of 23 bear management units of the primary conservation area and in at least six of seven occupancy units of Zone 1 at least every six years. Adherence to this objective will be evaluated by monitoring the presence of females with offspring (cubs, yearlings, or 2-year-olds) within defined geographic units of the NCDE;

(b) manage mortalities from all sources to support an estimated probability of at least 90% that the grizzly bear population within the demographic monitoring area remains above 800 bears, considering the uncertainty associated with all of the demographic parameter and further manage mortality within the following threshold objectives:

(i) using a 6-year running average, maintain estimated annual survival rate of independent females within the demographic monitoring area of at least 90% and a rate at or above the minimum level consistent with a projected probability of at least 90% that the population within the demographic monitoring area will remain above 800 bears based on population modeling;

(ii) using a 6-year running average, limit annual estimated number of total reported and unreported mortalities of independent females within the demographic monitoring area to a number that is no more than 10% of the number of independent females estimated within the demographic monitoring area based on population modeling and a number that is at or below the maximum level consistent with a projected probability of at least 90% that the population within the demographic monitoring area will remain above 800 bears based on population modeling;

(iii) using a 6-year running average, limit annual estimated number of total reported and unreported mortalities of independent males within the demographic monitoring area to a number that is no more than 15% of the number of independent males estimated within the demographic monitoring area based on population modeling.

(c) monitor demographic and genetic connectivity among populations by the following means:

(i) estimating spatial distribution of the NCDE grizzly bear population biennially; and

(ii) identifying the population of origin for individuals sampled inside and outside of the demographic monitoring area to detect movements of individuals to and from other populations or recovery areas.

AUTH: 87-1-301, MCA
IMP: 87-1-201, 87-1-301, MCA

REASON: The Northern Continental Divide Ecosystem (NCDE) is one of six recovery areas identified in the Grizzly Bear Recovery Plan. Grizzly bears in the NCDE are currently listed as threatened under the Endangered Species Act, although they have met their recovery criteria and may be proposed for delisting in the near future. The NCDE includes Glacier National Park, parts of the Flathead and Blackfeet Indian Reservations, parts of five national forests, Bureau of Land Management lands, and state and private lands. Recovery of the grizzly bear in the NCDE has been focused on a core recovery zone and a buffer area around it, identified as Zone 1. Together, these zones make up the Demographic Monitoring Area (DMA), where the objective is continual occupancy by grizzly bears, facilitated by maintenance of compatible habitat conditions and population criteria. The DMA encompasses more than 16,000 square miles (or 42,000 square kilometers).

Managers from federal and state agencies and the tribes have developed a draft Conservation Strategy for the Grizzly Bear in the Northern Continental Divide Ecosystem (Conservation Strategy) which is intended to guide management of grizzly bears once they are delisted. All are expected to sign the Conservation Strategy, thereby agreeing to use their respective authorities to maintain and enhance the recovered status of the grizzly bear in the NCDE after delisting by implementing respective regulatory mechanisms, interagency cooperation, population and habitat management and monitoring, and other provisions.

To delist a species or distinct population segment of a species from the Endangered Species Act, there must be adequate regulatory mechanisms in place to ensure that it will not once again become threatened or endangered. The commission is proposing to adopt the demographic objectives of the NCDE Conservation Strategy into administrative rule to demonstrate Montana's commitment to maintaining a recovered grizzly bear population in the NCDE, as well as strengthen the regulatory mechanisms associated with population management.

4. The commission proposes to transfer the following rule:

| OLD | NEW | |
|---|---|---|
| ARM 12.9.103 | ARM 12.9.1401 | GRIZZLY BEAR POLICY |

AUTH: 87-1-301, MCA
IMP: 87-1-201, 87-1-301, MCA

REASON: The commission is proposing to transfer ARM 12.9.103 for organizational purposes so that it will be in the same subchapter as New Rule I. If the commission does not adopt New Rule I, then ARM 12.9.103 will not be transferred and will remain the same.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearings. Written data, views, or arguments may also be submitted to: Grizzly Bear ARM – Wildlife Division, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail FWPGRIZZLYBEARARM@mt.gov, and must be received no later than October 26, 2018.

6. Kaedy Gangstad or another person appointed by the department has been designated to preside over and conduct these hearings.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the commission has determined that the adoption and transfer of the above-referenced rules will not significantly and directly impact small businesses.

/s/ William Schenk
William Schenk
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion
Chair
Fish and Wildlife Commission

Certified to the Secretary of State August 14, 2018.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 17.30.103, 17.30.106, 17.30.108, and 17.30.109 regarding 401 Certification | ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY) |

TO: All Concerned Persons

1. On September 18, 2018, at 1:00 p.m., the Board of Environmental Review will hold a public hearing in Room 45 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., September 11, 2018, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.30.103 APPLICATION FOR CERTIFICATION (1) remains the same.

(2) An application for state water quality certification under this subchapter is not deemed complete until the permit fee required under ARM 17.30.201 is remitted to the department.

(2) remains the same, but is renumbered (3).

~~(3)~~ (4) The department may exempt an applicant from the information requirements of (3)~~(2)~~(b), (c), and (e) of this rule, if the applicant's federal permit application is to the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, 33 USC 1344, as amended, and the federal permit application provides the information required under these sections.

(4) and (5) remain the same, but are renumbered (5) and (6).

~~(6)~~ (7) An application is deemed complete if~~:~~ the applicant has provided all information included in (3), and the fee required in (2).

~~(a) the department has not made a determination within 30 days after receipt of the application or, subsequent to receipt of the initial application, within 30 days of receipt of materials submitted by the applicant that supplement the application; or~~

~~(b) the department notifies the applicant that the application is complete.~~

AUTH: 75-5-401, MCA
IMP: 75-5-402, ~~75-5-403,~~ MCA

REASON: The proposed amendments are necessary to clarify that an application for certification is deemed complete upon submission of the information required in (3) and the fee required in (2). The information and fee are both necessary to facilitate and support the department's review of the application for certification.

Under Section 401 of the Clean Water Act, federal agencies, most often the U.S. Army Corps of Engineers, issue permits authorizing discharges to navigable waters. Prior to the federal agency's issuance of a permit, it must receive certification from a state that the activity complies with state water quality standards. Under federal law, a state has a reasonable period of time, not to exceed one year, within which to provide certification. The 30-day timeframe within which the department is required to determine completeness under the current rule does not allow the department to coordinate its review with that of the federal agency. Additionally, the 30-day timeframe does not allow the department sufficient time and flexibility to work with the applicant, review the project for compliance with state water quality standards, and coordinate with the federal permitting agency regarding certification of an activity under Section 401 of the Clean Water Act, especially for more complex or controversial projects.

The proposed amendment to ARM 17.30.103 applies only to state certifications necessary for the issuance of a federal permit by a federal agency. The proposed amendment does not apply to the department's completeness review of applications for state-issued discharge permits under 75-5-403(1), MCA. Under this statute, the department has a maximum of 75 days to determine that an application for discharge permit is complete. An application is considered complete unless the applicant is notified of a deficiency within that review period.

17.30.106 TENTATIVE DETERMINATION BY THE DEPARTMENT (1) The department shall, within 30 days of receipt of a completed application, notify the applicant, the federal permitting or licensing agency, and the regional administrator of its tentative determination to either issue, issue with conditions, or deny certification. ~~If the department does not notify the applicant of a tentative determination within 30 days after the application is determined to be complete, the department is deemed to have waived certification.~~

(2) through (4) remain the same.

(i) remains the same but is renumbered (a).

~~(ii)~~ (b) a statement of conditions which the department deems necessary for allowing the discharge, including: ~~necessary monitoring requirements. Necessary monitoring requirements include, but are not limited to:~~

~~(A)~~ (i) ~~at least 7 days prior to the beginning of the discharge, the applicant shall notify the department of intent to commence the discharge;~~ necessary monitoring requirements; and

~~(B) within 7 days after the completion of the discharge, the applicant shall notify the department of the completion; and~~

~~(C)~~ (ii) the applicant ~~shall~~ will be required to allow the department reasonable entry and access to the discharge site in order to inspect the discharge for compliance with the certification requirements applicable to the facility or activity.

(5) through (7) remain the same.

AUTH: 75-5-401, MCA
IMP: 75-5-402, ~~75-5-403,~~ MCA

REASON: The federal permitting agency treats waivers as permanent even if the project changes and the department does not want to waive its Section 401 certification authority without proper consideration of potential project impacts. The proposed changes are necessary to prevent automatic waivers and ensure the department has the opportunity to review Section 401 certification projects for compliance with state water quality standards.

17.30.108 PUBLIC NOTICE AND FINAL DETERMINATION BY THE DEPARTMENT (1) Except as provided in ~~(5)~~ (6) of this rule, the department shall provide public notice of the department's tentative determination. The department shall mail the notice to:

(a) the applicant;

(b) federal, state, and local government agencies with jurisdiction over the location of the proposed discharge;

(c) affected states; and

(d) any person on request.

(2) In addition, the department shall publish a legal notice ~~once weekly~~ for 2 consecutive weeks ~~in a newspaper of general circulation that is circulated in the county in which the activity is proposed~~ on the department's web page. The department may include additional notice which may involve:

(a) through (c) remain the same.

~~(2)~~ (3) Notice under (1) and (2) of this rule shall contain the information required under ARM 17.30.106(3).

~~(3)~~ (4) If there is significant public interest in a proposed action under this rule, the department shall set a public hearing, which must be scheduled not less than 30 days after the hearing has been given public notice pursuant to (1) and (2) of this rule.

~~(4)~~ (5) The deadline for written comment is 30 days from the date of issuance of the public notice pursuant to (1) and (2) or, if a public hearing is conducted pursuant to ~~(3)~~ (4) of this rule, 14 days after the date of the hearing.

~~(5)~~ (6) ~~A project applicant who has filed an application for a permit with the United States Army Corps of Engineers under 33 USC section 1344, as amended, to place dredged or fill material in navigable waters meets the~~ The requirements of this section are met if ~~the~~ an application for a permit under 33 USC 1344 is given public notice by the United States Army Corps of Engineers, ~~and~~ the public notice contains a statement referencing the department's certification responsibility under section 401 of the federal Clean Water Act, 33 USC section 1341, ~~as amended~~ and the department has received a complete application under ARM 17.30.103.

~~(6)~~ (7) The department shall make its final decision within ~~30 days~~ a reasonable amount of time, not to exceed one year after the close of the comment period, as determined pursuant to ~~(4)~~ (5) ~~of this rule or~~, if the project requires public notice under 33 USC section 1344, as amended, within ~~30 days~~ a reasonable

amount of time, not to exceed one year after the close of the comment period set by the United States Army Corps of Engineers pursuant to (6).

AUTH: 75-5-401, MCA
IMP: 75-5-402, ~~75-5-403,~~ MCA

REASON: The proposed amendments are necessary to clarify and update public notice requirements and public comment timeframes for the department's tentative Section 401 certification determinations. Applicants and other agencies with jurisdiction should be made aware that 401 certifications are being publicly noticed. The requirement to publicly notice in local newspapers was stricken because the department's website, emails, and mailings have proven far more effective at disseminating the public notice to interested parties and making the general public aware of pending department actions. The requirement to publish the notice once weekly for two weeks is also stricken because the notice will be published for two consecutive weeks on the department's website. The Army Corps of Engineers, which is the primary authorizing federal agency associated with 401 actions, only publicly notices online. These amendments are necessary to allow the department to issue a joint public notice with the Army Corps of Engineers making certification information more accessible to the public by placing all the federal and state information in the same location instead of spread across federal and state webpages.

17.30.109 APPEAL TO THE BOARD (1) remains the same.

(2) If a decision of the department made under ARM 17.30.108 undergoes review by the board under this section, the department shall notify the licensing or permitting agency that certification is ~~denied~~ suspended for the period in which the department's decision is under review by the board.

(3) remains the same.

AUTH: 75-5-401, MCA
IMP: 75-5-402, 75-5-403, MCA

REASON: The change in ARM 17.30.109(2) is necessary to clarify the status of the department's certification when the decision is appealed to the board. Upon appeal, the department's certification decision is suspended while the decision is under review by the board. The use of the word "denied" erroneously suggests that the applicant would have to reapply for the state's certification.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt@gov, no later than 5:00 p.m. September 21, 2018. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Sarah Clerget, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*/s/ Edward Hayes* BY: */s/ Christine Deveny*
EDWARD HAYES CHRISTINE DEVENY
Rule Reviewer Chairman

Certified to the Secretary of State, August 14, 2018.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.56.101, 17.56.102, 17.56.104, 17.56.105, 17.56.201, 17.56.202, 17.56.204, 17.56.302, 17.56.303, 17.56.304, 17.56.305, 17.56.312, 17.56.401, 17.56.402, 17.56.403, 17.56.407, 17.56.408, 17.56.409, 17.56.502, 17.56.504, 17.56.701, 17.56.702, 17.56.801, 17.56.802, 17.56.803, 17.56.807, 17.56.808, 17.56.809, 17.56.810, 17.56.811, 17.56.821, and 17.56.1301, and the adoption of New Rules I, II, III, and IV pertaining to underground storage tanks petroleum and chemical substances | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT<br><br>(UNDERGROUND STORAGE TANKS) |

TO: All Concerned Persons

1. On September 14, 2018, at 10:00 a.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., September 7, 2018, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The United States Environmental Protection Agency (EPA) promulgated underground storage tank (UST) regulations at 40 Code of Federal Regulations (CFR) Part 280 and regulations for approval of State UST programs at 40 CFR Part 281. The federal regulations set minimum standards for UST system installations and for the operation and maintenance of UST systems, including requirements for release monitoring and reporting; release response and corrective action; maintenance of financial responsibility sufficient to address UST system releases; UST system operator training; regular compliance inspections; prohibiting delivery of regulated substances to noncompliant UST systems; secondary containment; and recordkeeping requirements. In 2005, the Energy Policy Act amended the federal UST program and in 2015, EPA amended the state program approval regulations.

These proposed amendments to ARM Title 17, chapter 56 are necessary to maintain the state's program authorization and to ensure the state is no less stringent than federal UST regulations.

4. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with those definitions in 75-11-203, 75-11-302, and 75-11-503, MCA.

(1) through (13) remain the same.

(14) "Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps and related components in the containment area. Containment sumps may be single walled or secondarily contained and may be located at the top of the tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

(14) through (17) remain the same, but are renumbered (15) through (18).

(19) "Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

(20) "Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system.

(18) through (36) remain the same, but are renumbered (21) through (39).

~~(37)~~ (40) "Motor fuel" means ~~petroleum or a petroleum-based substance that is~~ a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (for example: motor gasoline blended with alcohol) ~~any grade of gasohol, and is typically used in the operation of a motor engine~~.

(38) remains the same, but is renumbered (41).

~~(39)~~ (42) "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after ~~the effective date of this rule~~ November 3, 1989.

(40) through (58) remain the same, but are renumbered (43) through (61).

~~(59)~~ (62) "Release detection" means determining whether a release of a regulated substance has occurred from the tank system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

~~(60)~~ (63) "Repair" means to restore to proper operating condition a ~~damaged or leaking~~ tank, ~~or~~ pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component ~~to the manufacturer's original design standards~~ that has caused a release of product from the UST system or has failed to function properly.

(64) "Replaced" means:

(a) for a tank - to remove a tank and install another tank.

(b) for piping - to remove 50 percent or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

(61) through (70) remain the same, but are renumbered (65) through (74).

~~(71)~~ (75) "Terminal piping" means piping that:

(a) is located within a facility with a North American Industry Classification System (NAICS) code of ~~424720~~ 424710 (~~product terminals~~ Petroleum Bulk Stations and Terminals) (2017), 486110 (~~petroleum pipelines, crude~~ Pipeline Transportation of Crude Oil) (2017), ~~4486910~~ 486910 (~~petroleum pipelines, refined~~ Pipeline Transportation of Refined Petroleum Products) (2017), or 482111 (~~l~~Line ~~h~~Haul ~~r~~Railroads (2017);

(b) through (e) remain the same.

(f) Copies of the NACIS codes listed in (a) are available at https://www.naics.com/contact-us/ or by calling 1-888-756.2427. Copies are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

(72) through (78) remain the same, but are renumbered (76) through (82).

AUTH: 75-11-204, 75-11-319, 75-11-505, MCA
IMP: 75-11-203, 75-11-302, 75-11-319, 75-11-505, MCA

REASON: The department is proposing to add definitions and clarify language to maintain consistency with the EPA's underground storage tank and state program approval regulations published July 15, 2015. It is necessary that the department add definitions for "containment sump," "dispenser," "dispenser system," and "replaced" to maintain parity between the state and federal definitions. In addition, it is necessary to add clarifying language to the definitions for "motor fuel" to include hydrocarbon and alcohol blends; "new tank system" to add a definitive installation date on or after which a tank system is considered to be new for purposes of tank installation and operation and maintenance requirements; "release detection" to clarify that the term includes detecting releases from the tank system into the environment or into the interstitial space between the tank and the secondary barrier or secondary containment around the tank; "repair" to broaden the definition so that it aligns with the federal definition of tank system repair to include all work to restore a tank, or components of a tank system, to proper working order after a release or other failure of the tank system to function; and "terminal piping" to correct and update references to the North American Industry Classification System (NAICS) codes that are assigned to facilities that have piping meeting the definition of terminal piping and to add information so that the public can access copies of the referenced NAICS codes. Defining additional terms and clarifying the definitions as described above is necessary to assist tank owners and operators, and other members of the regulated community, to understand the requirements set forth in ARM Title 17, chapter 56. Additionally, the proposed definitions and clarifying language enable the department to meet federal stringency requirements, to maintain state program authorization, and to better protect human health and the environment.

17.56.102 APPLICABILITY (1) through (4) remain the same.

(5) Subchapters 2, 3, 4, 8, and 15 do not apply to ~~any of the following types of UST systems:~~

~~(a)~~ any UST system whose capacity is 110 gallons or less~~;~~.

~~(b) airport hydrant fuel distribution system; and~~

~~(c) UST systems with field-constructed tanks.~~

(6) remains the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-319, 75-11-505, MCA

REASON: The department is proposing to delete the exemptions from regulatory requirements for airport hydrant fuel distribution systems and field-constructed tanks. This change is necessary for the state program to comply with EPA's underground storage tank and state program approval regulations published July 15, 2015. With its 2015 amendments to 40 CFR 280, the EPA removed the exception for field-constructed tanks and airport hydrant systems, making these tanks subject to UST requirements. The proposed amendment is necessary for the department to meet federal stringency requirements, maintain state program authorization, and better protect human health and the environment by no longer excluding field constructed tanks and airport hydrant systems from UST requirements.

17.56.104 TANK STANDARDS FOR ~~EXEMPTED~~ EXCLUDED UST SYSTEMS (1) Owners or operators must install ~~No person may install~~ an UST system listed in ARM 17.56.102(4) or (5) that meets the following requirements for ~~the purpose of~~ storing regulated substances ~~unless the UST system~~ (whether of single- or double-wall construction):

(a) through (c) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: It is necessary to change the title of this rule to reference "excluded" rather than "exempted" UST systems. The proposed change clarifies that while certain tank standards in this chapter do not apply to the tanks listed in ARM 17.56.102(4) and (5), these tanks are subject to standards that are designed to protect human health and the environment from tank releases that may occur due to corrosion, structural failure, or incompatibility between the tank and the stored substance. The department is also proposing modifications to (1) that are necessary to make the rule more readable, provide affirmative direction to owners and operators, and to align the language of the rule with 40 CFR Part 280.11 (installation requirements for partially excluded UST systems).

17.56.105 VARIANCES (1) Any person subject to this chapter may request in writing that a variance from ~~any~~ requirements or procedures of this chapter be

granted by the department to the requestor if the request includes approval of an alternate requirement or procedure.

(2) through (6) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The proposed amendment of (1) is necessary to delete the word "any" and clarify that a variance may be granted for certain UST requirements or procedures of this chapter when the written request for variance complies with (2), including an adequate demonstration that an alternate procedure or requirement will provide equivalent or greater protection of public health, welfare, safety, and the environment. The department may not grant a variance from "any" requirement or procedure because minimum standards for UST installation, operation, and maintenance must be met. The proposed amendments are necessary to maintain the state's program authorization and to ensure the state is no less stringent than federal UST regulations.

17.56.201 PERFORMANCE STANDARDS FOR NEW ~~UST~~ TANK SYSTEMS (1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems shall meet the following requirements:

(a) remains the same.

(i) the tank is constructed of fiberglass-reinforced plastic in accordance with any one of the standards in ~~(2)~~(6)(a) and ~~through (c)~~(b); or

(ii) the tank is constructed of steel and cathodically protected in the following manner and in accordance with any one of the standards in ~~(2)~~(6)~~(d)~~(c) through (j):

(A) through (D) remain the same.

(iii) the tank is constructed of ~~a~~ steel ~~fiberglass-reinforced-plastic composite~~ and clad or jacketed with a non-corrodible material in accordance with all of the standards in ~~(2)~~(6)~~(e)~~(k) ~~and~~ through ~~(k)~~(n);

(b) remains the same.

(i) the piping is constructed of ~~fiberglass-reinforced plastic~~ non-corrodible material in accordance with all of the standards in ~~(2)~~(6)~~(l)~~(o) ~~through~~ and ~~(e)~~(p); or

(ii) the piping is constructed of steel and cathodically protected in the following manner and in accordance with all of the standards in ~~(2)~~(6)~~(p)~~(s) through ~~(s)~~(w):

(A) through (D) remain the same.

(c) to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators shall use the following spill and overfill prevention equipment:

(i) remains the same.

(ii) overfill prevention equipment that will:

(A) automatically shut off flow into the tank when the tank is no more than 95~~%~~ percent full; or

(B) alert the transfer operator when the tank is no more than 90% percent full by restricting the flow into the tank or triggering a high-level alarm.

(iii) flow restrictors used in vent lines may not be used to comply with (1)(c)(ii) when overfill prevention is installed or replaced after October 13, 2018; and

(iv) spill and overfill prevention equipment must be periodically tested or inspected in accordance with [NEW RULE I].

(d) all tanks and piping must be properly installed in accordance with this chapter, the manufacturer's instructions or specifications, all permit conditions, and all applicable standards identified in (6) ~~(2)(q) and (t) through (v)~~;

(e) remains the same.

(2) Except for suction piping that meets the requirements in ARM 17.56.402, tanks and piping installed or replaced must be secondarily contained and use interstitial monitoring in accordance with ARM Title 17, chapter 56, subchapters 2 and 4.

(3) Secondary containment must contain regulated substances leaked from the primary containment until detected and removed and prevent the release of regulated substances to the environment.

(4) For cases where the piping is replaced, the entire piping run must be secondarily contained.

(5) Each UST system must be equipped with under-dispenser containment pursuant to ARM 17.56.204.

~~(2)~~ (6) The department adopts and incorporates by reference the version in effect on January 1, ~~2016~~ 2018, of the following standards, specifications, and publications:

(a) Underwriters Laboratories Standard 1316, "~~Standard for~~ Glass-Fiber-Reinforced Plastic Underground Storage Tanks for ~~Petroleum Products~~ Alcohols, and Alcohol-Gasoline Mixtures," which sets forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum products, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) Underwriters Laboratories of Canada Standard ULC-S615, "Standard for ~~Fibre~~ Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids," which sets forth requirements for the manufacture and installation of horizontal reinforced plastic underground tanks for petroleum products, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

~~(c) American Society of Testing and Materials Standard D4021, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks," which sets forth design standards for Fiber Reinforced Polyester (FRP) UST tanks, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;~~

~~(d)~~ (c) Steel Tank Institute, "Specification for STI-P3 ~~System of~~ ® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks," which sets forth design and installation standards of cathodically protected steel underground storage tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

~~(e)~~ (d) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks," which sets forth design requirements for factory installed exterior corrosion protection systems for steel underground storage tanks intended for flammable and combustible liquids, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(f) remains the same, but is renumbered (e).

~~(g)~~ (f) Underwriters Laboratories of Canada Standard ULC-S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth the requirements for external corrosion protection systems on carbon steel underground storage tanks, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(h) remains the same, but is renumbered (g).

(h) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks," which sets forth design requirements for standard dual wall underground steel storage tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(i) National Association of Corrosion Engineers Standard ~~RP0285~~ SP0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, a copy of which may be obtained from NACE~~,~~ International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(j) remains the same.

(k) ~~the Association for Composite Tanks~~ Steel Tank Institute ACT-100, ~~"Specification~~ F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks," ~~for the Fabrication of FRP Clad Underground Storage Tanks,"~~ which sets forth ~~a minimum consensus standard for the fabrication of FRP clad/composite tanks~~ manufacturing specifications to build the ACT-100 FRP composite steel underground storage tank, a copy of which may be obtained from the ~~Association for Composite Tanks, 108 N. State Street, Suite 720, Chicago, IL 60602~~ Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(l) remains the same.

(m) ~~Underwriters Laboratories Standard 567, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas," which sets forth manufacture and installation standards for pipe connectors, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;~~ Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks," which sets forth manufacturing requirements to build the ACT-100-U composite steel underground storage tank, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(n) ~~Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids," which sets forth requirements of manufacture and installation of fiberglass reinforced plastic pipe and~~

~~fittings, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;~~ Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®," which sets forth manufacturing requirements to build a Permatank®, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(o) Underwriters Laboratories of Canada Standard ~~ULC-S633~~ ULC-S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids," ~~Flexible Underground Hose Connectors,"~~ which sets forth requirements for underground piping for flammable and combustible liquids ~~flexible underground hose connectors for petroleum products~~, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(p) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(q) and (r) remain the same.

(s) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe," which sets forth manufacturing requirements for metallic and composite primary carrier, secondary containment, and integral primary/secondary pipe systems, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(t) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems," which sets forth design, installation, and monitoring of corrosion control systems for underground metallic piping, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

~~(s)~~ (u) National Association of Corrosion Engineers ~~RP0169~~ Practice SP0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," which sets forth practices for the control of external corrosion or buried or submerged metallic piping systems, a copy of which may be obtained from NACE~~,~~ International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(t) remains the same, but is renumbered (v).

~~(u)~~ (w) American National Standards Institute Standard B31.3, "Process Piping," which sets forth ~~proper installation and design standards for piping of an UST system,~~ requirements for piping typically found in petroleum refineries; chemical, pharmaceutical, textile, paper, semiconductor, and cryogenic plants; and related processing plants and terminals, a copy of which may be obtained from ANSI, 25 W. 43rd Street, 4th Floor, New York, NY, 10036, (212) 642-4900 ~~The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;~~

~~(v)~~ (x) ; ~~American~~ National Fire Protection ~~Standards Institute~~ Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages," ~~B31.4, "Pipeline~~

~~Transportation Systems for Liquids and Slurries," which sets forth proper installation and design standards piping of an UST system,~~ which sets forth safeguards for dispensing liquid and gaseous motor fuels into the fuel tanks of automotive vehicles and marine craft, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;

~~(w)~~ (y) ~~Underwriters Laboratory 1856, "Underground Fuel Tank Internal Retrofit Systems," which sets forth requirements for nonmetallic retrofit systems intended for field installation inside steel or fiberglass underground fuel tanks, a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709; and~~ NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth minimum requirements for using CP to control external corrosion of metallic UST systems, a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200; and

~~(x)~~ (z) American Petroleum Institute 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and ~~Service~~ Filling Stations," which describes recommended practices for the storing, handling, and fire protection of ethanol and gasoline-ethanol blends from E1 to E15 and from E65 to E100 (used for E85) at distribution terminals and filling stations, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing revisions and updates to the performance standards for new and replaced UST systems and system components to maintain consistency with EPA's underground storage tank and state program approval regulations published July 15, 2015. It is necessary to update the following new UST system performance standards so that the department meets federal stringency requirements, maintains state program authorization, and protects human health and the environment consistent with 40 CFR Part 280.20:

(1) Update the requirements for installation and periodic testing of spill and overfill prevention equipment at ARM 17.56.201(1)(c) to prohibit the use of flow restrictors in vent lines to comply with overfill prevention equipment requirements and to require periodic testing and inspection of overfill prevention equipment;

(2) Update requirements for secondary containment and interstitial monitoring on all new tanks and piping at ARM 17.56.201(2) through (4) to more specifically describe the minimum performance requirements for secondary containment and interstitial monitoring;

(3) Require under-dispenser containment at ARM 17.56.201(5); and

(4) Update the standards and industry codes referenced in ARM 17.56.201(6) to include the most current standards designed to prevent releases of regulated substances to the environment from corrosion of UST systems. These updated standards and industry codes provide the latest technology to ensure proper installation, operation, and maintenance of UST systems and protect human

health and the environment.

17.56.202 UPGRADING OF EXISTING UST SYSTEMS (1) Owners and operators must permanently close, in accordance with ARM Title 17, chapter 56, subchapter 7, any UST system that does not meet the new UST system performance standards in ARM 17.56.201 or has not been upgraded in accordance with (2) through (4). This requirement does not apply to previously deferred UST systems described in [NEW RULE IV] and where an upgrade is required by the department.

(1) remains the same, but is renumbered (2).

~~(2)~~ (3) Steel tanks must be upgraded to meet any one of the following requirements in accordance with ~~all of~~ the standards in ~~(5)~~ (6):

(a) remains the same.

(i) the lining is installed in accordance with the requirements of ARM 17.56.304; ~~and~~

(ii) within ten years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications; and

(iii) if the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, then the lined tank must be permanently closed in accordance with ARM Title 17, chapter 56, subchapter 7.

(b) and (c) remain the same.

~~(3)~~ (4) Metal piping that routinely contains regulated substances, and is in contact with the ground, must be cathodically protected in accordance with all of the standards adopted by reference in ARM 17.56.201~~(2)~~(6)~~(p)~~(s) through ~~(s)~~(w) and must meet the requirements of ARM 17.56.201(1)(b)(ii)(B), (C), and (D).

(4) remains the same but is renumbered (5).

~~(5)~~ (6) The department adopts and incorporates by reference the version in effect on January 1, ~~2016~~ 2018, of the following publications and standards:

(a) through (d) remain the same.

(e) Ken Wilcox Associates Recommended Practice, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera," a copy of which may be obtained from Ken Wilcox Associates, Inc., 1125 Valley Ridge Drive, Grain Valley, MO 64029, (816) 443-2494.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department proposes revisions to the requirements for upgrading existing UST systems to maintain consistency with EPA's underground storage tank and state program approval regulations published July 15, 2015. It is necessary to update the requirements for upgrading existing UST systems so that the department meets federal stringency requirements, maintains state program authorization, and protects human health and the environment consistent with 40 CFR Part 280.21.

In order to meet stringency requirements, it is necessary to amend (1) to require owners and operators to permanently close an UST system that does not meet new UST performance standards in ARM 17.56.201 or is not upgraded in accordance with ARM 17.56.202(2) through (4).

It is necessary to amend (3) to add (3)(a)(iii) requiring permanent closure of an existing steel tank when the tank's internal lining is not performing in accordance with design specifications and cannot be repaired.

In addition, it is necessary to amend (6) to incorporate the most current standards and codes applicable to UST upgrades to prevent releases of regulated substances to the environment from corrosion of UST systems. These updated standards and codes provide the latest technology to ensure upgrades of UST systems are done properly and in a manner that is protective of human health and the environment.

17.56.204 SECONDARY CONTAINMENT, UNDER-DISPENSER CONTAINMENT, AND INTERSTITIAL MONITORING (1) Any UST that is replaced or installed after November 26, 2009 must employ:

(a) secondary containment and approved continuous interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method; and

~~(b) under-dispenser containment that provides access; and~~

(c) remains the same, but is renumbered (b).

(2) remains the same.

(3) If ~~over~~ 50~~%~~ percent or more of the length (measured from the piping terminus at the tank to the nearest point where the product is dispensed or otherwise used) or a pressurized product pipe regulated under this chapter is replaced, then the entire length of product piping must be replaced with secondarily-contained piping. The replacement of a line of product piping from a particular UST does not require the replacement of product pipes connected to other USTs.

(4) Under-dispenser containment must be installed under dispensers when:

(a) remains the same.

(b) dispensers and any associated hardware used to attach the dispenser to the ~~product piping are replaced;~~ underground storage tank system are replaced. Equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and used to connect the dispenser to the underground piping;

(c) through (e) remain the same.

(5) If under-dispenser containment is required pursuant to (1) or (4), the containment must:

(a) through (c) remain the same.

(d) allow for visual inspection and access to the components in the containment system ~~and/~~or ~~allow the system to~~ be periodically monitored for leaks from the dispenser system.

AUTH: 75-11-505, MCA
IMP: 75-11-509, MCA

REASON: The department proposes revisions to the requirements for secondary containment, under-dispenser containment, and interstitial monitoring to maintain consistency with EPA's underground storage tank and state program approval regulations published July 15, 2015. It is necessary to update the requirements for new UST systems so that the department meets federal stringency requirements, maintains state program authorization, and protects human health and the environment consistent with 40 CFR Part 280.20.

It is necessary to amend (1) to add the effective date. After November 26, 2009, new UST system installations or replacements must include secondary containment, under-dispenser containment, and interstitial monitoring to comply with EPA's *Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act of 2005* (2005).

Additionally, the department is proposing deletion of (1)(b) because (5)(d) requires that under-dispenser containment equipment provide access to system components making the provision in (1)(b) duplicative and unnecessary.

It is necessary to amend (3) in order to delete the percent symbol (%) and write out percent in accordance with Montana Secretary of State rule writing protocol.

It is necessary to amend (4)(b) to clarify when the installation or replacement of a dispenser system is subject to under-dispenser containment requirements and define "equipment necessary to connect the dispenser to the underground storage tank system" so that it is clear to the regulated community when the installation or replacement of a dispenser system and associated equipment will trigger installation of under-dispenser containment.

It is necessary to amend (5)(d) in order to clarify the under-dispenser containment requirements and ensure consistency with 40 CFR 280.20(f)(2). The proposed amendment requires under-dispenser containment to allow for visual inspection and access to the components in the containment system or be periodically monitored for leaks from the dispenser system.

17.56.302 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (1) All owners and operators of ~~steel~~ metal UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented ~~for as long as~~ until the UST system is ~~used to store regulated substances~~ permanently closed or undergoes a change-in-service pursuant to ARM Title 17, chapter 56, subchapter 7:

(a) remains the same.

(b) all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) remains the same.

(ii) the criteria that are used to determine that cathodic protection is adequate as required by this rule must be in accordance with ~~National Association of Corrosion Engineers Standard RP0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection;"~~ one of the codes of practice listed in (2);

(c) and (d) remain the same.

(2) The department adopts and incorporates by reference the version in effect on January 1, ~~2016~~ 2018, ~~of the National Association of Corrosion Engineers Standard (NACE) RP0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection system standards for prevention of corrosion on buried or submerged metallic UST systems, a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200.~~ of the following standards and test methods:

(a) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems," a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(b) NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems," a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(c) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs," a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 50047, (800) 438-8265;

(d) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection," a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200; or

(e) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to amend (1) to require corrosion protection for metal, not just steel, tanks; to require corrosion protection to be maintained until the UST is permanently closed or undergoes a change in service in accordance with ARM 17.56.702; and to update standards and test methods in ARM 17.56.302 to be no less stringent than 40 CFR Part 280.31. It is necessary to update the department's requirements for corrosion protection to implement the latest technology for preventing releases of regulated substances to the environment. These updated requirements are required to meet federal stringency requirements, maintain state program authorization, and protect human health and the environment consistent with 40 CFR Part 280.31.

17.56.303 COMPATIBILITY (1) Owners and operators shall use an UST system made of or lined with materials that are compatible with the substance stored in the UST system. Owners and operators storing alcohol blends shall use American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations ~~the following~~

~~codes~~ to comply with the requirements of this rule~~:~~.

~~(a) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations;" and~~

~~(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."~~

(2) The department adopts and incorporates by reference the version in effect on July 1, ~~2006~~ 2018, of ~~the following publications:~~

~~(a)~~ American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and ~~Service~~ Filling Stations," which sets forth requirements for storing and handling regulated substances at UST facilities, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375~~; and~~.

~~(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations," which sets forth requirements for storing and handling regulated substances of UST facilities, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.~~

(3) Owners and operators must notify the department at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the department.

(4) Owners and operators with UST systems storing these regulated substances must demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment) with the regulated substance stored using one of the following options:

(a) certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(b) equipment or component manufacturer written approval indicating an affirmative statement of compatibility and specifying the range of biofuel blends the equipment or component is compatible with; or

(c) use another option determined by the department to be no less protective of human health and the environment.

(5) Owners and operators must maintain records in accordance with ARM 17.56.305 documenting compliance with ARM 17.56.303(4) for as long as the UST system is used to store the regulated substance.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to strike American Petroleum Industry (API) Publication 1627 cited in (1)(b) and (2)(b). The EPA no longer references this publication. The department agrees that API Publication 1627 is no longer necessary and appropriate for determining compatibility of UST systems with

methanol-blended fuels.

The department is proposing the addition of (3), (4) and (5) to make the rule conform to 40 CFR Part 280.32. These additional sections are necessary to provide specific requirements for storing certain alcohol blended fuels and other regulated substances identified by the department. The proposed amendment at (3), (4) and (5) are necessary to ensure the department receives proper notice that an owner/operator is switching to an alcohol fuel blend or other regulated substance that has been identified by the department; to require a demonstration of compatibility between the UST system and the regulated substance stored; and to prescribe recordkeeping requirements documenting compliance with compatibility requirements. The proposed changes enable the department to meet federal stringency requirements, maintain state program authorization, and better protect human health and the environment.

17.56.304 REPAIRS (1) and (2) remain the same.

(3) Repairs must meet the following requirements:

(a) through (d) remain the same.

(e) metal pipe sections and fittings that are damaged or have released product as a result of corrosion or other damage must be replaced~~. Fiberglass pipes and fittings must be repaired in accordance with the manufacturer's specifications or be replaced~~;

(f) upon completion of the repair and before the UST system is placed in service, the following tests must be performed:

(i) repaired tanks and piping must be tightness tested in accordance with ARM 17.56.407(1)(c) and 17.56.408(1)(b); ~~and~~

(ii) corrosion protection systems circuitry must be tested to ensure it is still functioning; and

(iii) repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness within 30 days following the date of completion of the repair according to one of the following:

(A) the manufacturer's instructions;

(B) a code of practice developed by a nationally recognized association or independent testing laboratory; or

(C) according to requirements established by the department.

(g) within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with ARM 17.56.302(1)(b) and (c) to ensure that it is operating properly; ~~and~~

(h) within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with [NEW RULE I]; and

~~(h)~~ (i) UST system owners and operators must maintain records (in accordance with ARM 17.56.305) of each repair ~~for the remaining operating life of~~ until the UST system ~~that demonstrate compliance with the requirements of this rule~~ is permanently closed or undergoes a change-in-service pursuant to ARM Title 17, chapter 56, subchapter 7.

(4) The department adopts and incorporates by reference the version in

effect on January 1, ~~2016~~ 2018, of the following standards or specifications:

(a) and (b) remain the same.

(c) ~~American Society of Testing and Materials Standard D4021, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks," which sets forth design standards for FRP UST tanks, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017~~ American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines," which sets forth guidelines and safe practices for in-service pipeline repairs for hazardous liquids, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

(d) Steel Tank Institute, "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks," which sets forth design and installation standards of cathodically protected steel underground storage tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265; ~~and~~

(e) Steel Tank Institute ~~ACT-100~~ Recommended Practice R972, ~~"Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks,"~~ "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks," ~~which sets forth a minimum consensus standard for the fabrication, installation, and repair of FRP clad/composite tanks,~~ which sets forth standards for the addition of supplemental anodes to STI-P3® Tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265~~.~~;

(f) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," which sets forth recommendations for the interior lining of existing steel and fiberglass reinforced plastic underground tanks used to store petroleum-based motor fuels and middle distillates, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

(g) National Leak Prevention Association Standard 631, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks," which sets forth standards for cleaning, interior inspection, repair and lining of underground storage tanks, a copy of which may be obtained from the National Leak Prevention Association, 7685 Fields Ertel Road, Cincinnati, OH 45241, (800) 543-1838;

(h) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(i) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth methods and practices for achieving effective control of external corrosion on underground or submerged metallic piping systems, a copy of which may be obtained from NACE International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200;

(j) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks," which sets forth requirements and procedures for the remanufacture of existing fiberglass reinforced plastic (FRP) underground storage tanks or FRP tanks damaged prior to installation, a copy of which may be obtained from the Fiberglass Tank and Pipe Institute, 8252 S. Harvard Avenue, Suite 102, Tulsa, OK 74137 (918) 809-6292;

(k) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks," which sets forth standards for interstitial tightness of existing underground double wall steel tanks, a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265;

(l) Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space - RP 2007-2," which sets forth field integrity testing of the dry annular space of double or triple wall underground fiberglass storage tanks, a copy of which may be obtained from the Fiberglass Tank and Pipe Institute, 8252 S. Harvard Avenue, Suite 102, Tulsa, OK 74137 (918) 809-6292; and

(m) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities," which sets forth general guidelines for the inspection and testing of leak detection, release prevention and overfill prevention equipment at UST facilities, a copy of which may be obtained from the Petroleum Equipment Institute, P.O. Box 2380, Tulsa, OK 74101, (918) 494-9696.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing amendments to ARM 17.56.304 to clarify, update, and add requirements applicable to repairs to UST systems. The proposed changes include updates to industry codes and standard practices for UST system repairs. The amendments are necessary to ensure the department adopts UST system repair requirements that are no less stringent than 40 CFR Part 280.33, the federal regulation pertaining to UST system repairs.

The department is proposing to amend (3)(e) to delete the reference to fiberglass pipes and fittings and to apply repair requirements to pipes and fittings constructed of non-corrodible material. This change is necessary to broaden the application of the repair rules as noncorrodible materials are not limited to fiberglass.

The department is proposing to add (3)(f)(iii) to require tightness testing of secondary containment when repairs occur in secondary containment areas of tanks and piping. This amendment is necessary to prevent leaks from secondary containment and for the department UST system repair requirements to be no less stringent than federal regulations.

The department is proposing to add (3)(h), requiring testing or inspection of repaired spill or overfill prevention equipment within 30 days following repair in accordance with New Rule I (pertaining to testing of spill prevention equipment and

containment sumps used for interstitial monitoring of piping and for periodic inspection of overfill prevention equipment). This amendment is necessary to prevent leaks from spill or overfill prevention equipment and for the department UST system repair requirements to be no less stringent than federal regulations.

The department is proposing to amend (3)(i) (previously (3)(h)) to require owners and operators to maintain records of UST system repairs until the UST system is permanently closed or undergoes a change in service. The previous rule was unclear as it required repair records to be maintained by the owner/operator for the remaining operating life of the tank. The proposed change is necessary to clarify the recordkeeping obligation for UST owners and operators and to ensure the department requirements are no less stringent than federal regulations.

Finally, the department is proposing to update industry standards and practices applicable to UST system repairs that are adopted by reference in (4) to ensure consistency with the industry codes referenced in 40 CFR Part 280.33. It is necessary that the department update the requirements pertaining to UST system repairs to prevent releases of regulated substances to the environment from corrosion of UST systems. These updated industry codes reflect the latest technology and are required to meet federal stringency requirements, maintain state program authorization, and protect human health and the environment consistent with 40 CFR Part 280.33.

17.56.305 REPORTING AND RECORDKEEPING (1) Owners and operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act (RCRA), amending the Solid Waste Disposal Act, as amended or pursuant to other state laws or rules, including the following:

(a) owners and operators shall submit the following information to the department:

(i) notification for all UST systems on a department-approved form that includes certification of installation of new UST systems and notification when any person assumes ownership of an UST system;

(ii) remains the same.

(iii) corrective actions planned or taken including initial abatement measures, initial site history, free product removal, the result of remedial investigations, and cleanup plan; ~~and~~

(iv) a notification before permanent closure or change-in-service; and

(v) notification at least 30 days prior to UST systems switching to certain regulated substances under ARM 17.56.303.

(b) owners and operators shall maintain the following information:

(i) and (ii) remain the same.

(iii) documentation of ~~recent~~ compliance with release detection requirements; ~~and~~

(iv) results of the site investigation conducted at permanent closure; ~~and~~

(v) documentation of compatibility for UST systems containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated

substance identified by the department;

(vi) documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping;

(vii) documentation of periodic walkthrough inspections;

(viii) records of site assessments conducted under ARM 17.56.407(1)(e) and (f) and investigations of leak detection alarms under ARM 17.56.407 and ARM 17.56.408; and

(ix) documentation of operator training.

(c) remains the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to amend (1) to more accurately cite the Resource Conservation Recovery Act as an amendment to the Solid Waste Disposal Act.

The proposed revisions to reporting and recordkeeping requirements in (1)(a) and (b) are necessary to meet federal stringency requirements, maintain state program authorization, and better protect human health and the environment by requiring reporting by owners and operators and maintenance of records demonstrating compliance with UST operation and maintenance requirements that are designed to prevent UST system leaks to the environment. The proposed amendments ensure the department is no less stringent than 40 CFR Part 280.34, the federal regulation concerning reporting and recordkeeping.

17.56.312 DELIVERY PROHIBITION (1) through (3) remain the same.

(4) Tanks issued a certificate in (2)(c) will be posted on the department's "Do Not Fill" web site at: ~~http://deq.mt.gov/Land/ust/nonpem/permittedtanks.~~ http://deq.mt.gov/Portals/112/Land/UST/Documents/MonthlyReportsPDF/NonPermittedTanks.pdf.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-505, 75-11-509, MCA

REASON: The department is proposing to provide a direct link to the website address in (4) to ensure the regulated community and the public know which tanks cannot legally receive or dispense fuel.

17.56.401 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS

(1) Owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that:

(a) remains the same.

(b) is installed~~,~~ and calibrated, ~~operated, and maintained~~ in accordance with the manufacturer's instructions; ~~, including routine maintenance and service checks for operability or running condition; and~~

(c) meets the performance requirements in ARM 17.56.407 or 17.56.408, with any performance claims and their manner of determination described in writing

by the equipment manufacturer or installer. In addition, methods listed in ARM 17.56.407(1)(b) through (d), (h) and (i); in ARM 17.56.408(1)(a) and (b); or in [NEW RULE IV] ~~used after December 22, 1990, except for methods permanently installed prior to that date,~~ must be capable of detecting a leak rate or quantity specified for that method in ARM 17.56.407(1)(b) through (d), (h) and (i); ~~or~~ in ARM 17.56.408(1)(a) and (b); or in [NEW RULE IV] with a probability of detection of 0.95 and a probability of false alarm of 0.05~~.~~; and

(d) beginning on October 13, 2021, the release detection method or a combination of methods must be operated and maintained, and electronic and mechanical components must be tested for proper operation, in accordance with one of the following:

(i) manufacturer's instructions;

(ii) a code of practice developed by a nationally recognized association or an independent testing laboratory;

(iii) the Petroleum Equipment Institute Publication RP1200 "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities;" or

(iv) requirements determined by the department to be no less protective of human health and the environment than the two options listed in (d)(i) and (d)(ii).

(2) A test of the proper operation of leak detection equipment must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

(a) automatic tank gauge and other controllers:

(i) test alarm;

(ii) verify system configuration; and

(iii) test battery backup.

(b) probes and sensors:

(i) inspect for residual buildup;

(ii) ensure floats move freely;

(iii) ensure shaft is not damaged;

(iv) ensure cables are free of kinks and breaks; and

(v) test alarm operability and communication with controller.

(c) automatic line leak detector:

(i) test operation to meet applicable criteria in ARM 17.56.408(1)(a) by simulating a leak.

(d) vacuum pumps and pressure gauges:

(i) ensure proper communication with sensors and controller.

(e) hand-held electronic sampling equipment associated with groundwater and vapor monitoring:

(i) ensure proper operation.

(2) remains the same, but is renumbered (3).

~~(3) Owners and operators of all UST systems shall comply with the release detection requirements of this subchapter by December 22 of the year listed in the following table below:~~

~~SCHEDULE FOR PHASE-IN OF RELEASE DETECTION~~

~~Year system was installed~~ | ~~Year when release detection is required (by December 22 of the year indicated)~~

| ~~1989~~ | ~~1990~~ | ~~1991~~ | ~~1992~~ | ~~1993~~ |
|---|---|---|---|---|
| ~~Before 1965 or date unknown~~ | ~~RD~~ | ~~P~~ | | |
| ~~1965-69~~ | | ~~P/RD~~ | | |
| ~~1970-74~~ | | ~~P~~ | ~~RD~~ | |
| ~~1975-79~~ | | ~~P~~ | | ~~RD~~ |
| ~~1980-88~~ | | ~~P~~ | | ~~RD~~ |

~~New tanks (after Dec. 22, 1988) immediately upon installation.~~

~~P = Must begin release detection for all pressurized piping in accordance with ARM 17.56.402(1)(b)(i) and 17.56.403(1)(b)(iv).~~

~~RD = Must begin release detection for tanks and suction piping in accordance with ARM 17.56.402(1)(a) and (b)(ii), and 17.56.403.~~

~~(4) Farm or residential tanks of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes, heating oil tanks, and emergency power generator tanks which were installed before 1965 or for which the date of installation is unknown, must comply with release detection requirements by December 22, 1990. Any of these types of tanks installed on or after January 1, 1965, must follow the schedule set forth in (3).~~

~~(5)~~ (4) Any ~~existing~~ UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the closure procedures in ARM Title 17, chapter 56, subchapter 7 ~~by the date on which release detection is required for that UST system under (4)~~.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to amend (1)(b) to delete the reference to operation and maintenance of UST systems, which is now addressed in (1)(d) and (2).

The department is proposing to amend (1)(c) to include the leak detection performance standards in ARM 17.56.407 (for tanks), in 17.56.408 (for piping) and in [NEW RULE IV] for previously deferred UST systems such as airport hydrant fuel tanks and field constructed tanks.

The department is proposing to amend (1)(d) to add specific operation and maintenance requirements for leak detection equipment.

The department is proposing to add (2) to provide requirements for routine testing of leak detection components that are consistent with 40 CFR 280.40 (including regular testing of automatic tank gauge equipment, probes and sensors, automatic line leak detectors, vacuum pumps and pressure gauges, and hand-held electronic sampling equipment).

The department is proposing to delete (3) and (4) because the performance schedules set forth in those provisions are now obsolete.

Finally, the proposed amendment of (4), formerly (5), is necessary to require any UST systems not applying a method of release detection that meets the

requirements of ARM Title 17, chapter 56, subchapter 4 to be closed in accordance with ARM Title 17, chapter 56, subchapter 7.

The proposed amendments to ARM 17.56.401 are necessary to update UST leak detection requirements so that they are no less stringent than the federal requirements set forth in 40 CFR Part 280.40, maintain state program authorization, and better protect human health and the environment from leaks from UST systems.

17.56.402 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

(1) Except as provided in (3), owners and operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(a) remains the same.

(i) UST systems that meet the performance standards in ARM 17.56.201 or 17.56.202, and the 30-day ~~monthly~~ inventory control requirements in ARM 17.56.407(1)(a) or (b), may use tank tightness testing (conducted in accordance with ARM 17.56.407(1)(c)) at least every five years until ~~December 22, 1998, or until~~ ten years after the tank ~~is~~ was installed ~~or upgraded under ARM 17.56.202(2), whichever is later~~;

~~(ii) UST systems that do not meet the performance standards in ARM 17.56.201 or 17.56.202 may use monthly inventory controls (conducted in accordance with ARM 17.56.407(1)(a) or (b)) and annual tank tightness testing (conducted in accordance with ARM 17.56.407(1)(c)) until December 22, 1998, when the tank must be upgraded under ARM 17.56.202 or permanently closed under ARM 17.56.702;~~

~~(iii)~~ (ii) tanks with capacity of 550 gallons or less ~~may use weekly tank gauging~~ and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in ARM 17.56.407(1)(b) in Table 1 may use manual tank gauging (conducted in accordance with ARM 17.56.407(1)(b)); and

~~(iv)~~ (iii) farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes installed prior to November 26, 2009, and a tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored installed prior to November 26, 2009, ~~and emergency power generator tanks with capacities of 1,100 gallons or less capacity~~ may use ~~yearly~~ manual tank gauging (conducted in accordance with ARM 17.56.407(1)(b)); and

(b) underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(i) underground piping that conveys regulated substances under pressure must:

(A) remains the same.

(B) have an annual line tightness test conducted in accordance with ARM 17.56.408(1)(b) or ~~have monthly~~ monitor~~ing~~ at least every 30 days ~~conducted~~ using a method in accordance with ARM 17.56.408(1)(c); and

(ii) underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with ARM 17.56.408(1)(b), or monitor at least every ~~use a monthly~~ 30 days using a ~~monitoring~~ method conducted in accordance with ARM 17.56.408(1)(c). No release detection is required for suction piping that is designed

and constructed to meet the following standards:

(A) through (2) remain the same.

(3) Terminal piping that is connected to aboveground storage tanks and not associated with an airport hydrant system, is exempt from the requirements of ARM ~~17.58.204(2)~~ 17.56.204(2) and (3), 17.56.304(3)~~(f)~~(g)(i), 17.56.408(1)(a) through (d), 17.56.504(1)(a), and 17.56.701(4)(b)(ii) and (d)(ii). The department may exempt other associated piping that is connected to aboveground storage tanks and is not associated with airport hydrant systems, on a case-by-case basis, if the department determines the exemption would not cause harm to human health or the environment.

(4) remains the same.

(5) The department adopts and incorporates by reference the version in effect on July 1, ~~2008~~ 2013, of American Petroleum Institute Recommended Practice 1110, "Recommended Practice for Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide," which sets forth guidelines for pressure testing steel pipelines for the transportation of gas, petroleum gas, hazardous liquids, highly volatile liquids, or carbon dioxide, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956.

AUTH: 75-11-302, 75-11-505, MCA
IMP: 75-11-302, 75-11-505, MCA

REASON: The department is proposing to revise and update requirements for petroleum UST systems in ARM 17.56.402. The proposed amendments are necessary to ensure the requirements are consistent with 40 CFR Part 280.41 (July 15, 2015).

The department is proposing to amend (1)(a)(i), to allow an UST system to use tank tightness testing every five years for ten years after the tank is installed as an exception from the requirement to monitor the tank every 30 days if the tank meets the UST system performance standards in ARM 17.56.201 or 17.56.202, and the 30-day inventory control requirements in ARM 17.56.407(1)(a) or (1)(b) to 17.56.402(3).

The department is proposing to amend (1)(a)(ii) to delete the exception from the requirement to monitor the tank every 30 days for USTs that do not meet the UST system performance standards in ARM 17.56.201 or 17.56.202 because that exception was subject to a timeline for compliance that is now outdated.

The department is proposing to amend (1)(a)(iii), now (1)(a)(ii), to allow the use of manual tank gauging conducted in accordance with ARM 17.56.407 instead of monitoring the tank every 30 days if the UST has a capacity of 550 gallons or less or a capacity between 550 and 1,000 gallons if the tank diameter meets the criteria in ARM 17.56.407.

The department is proposing to amend (1)(a)(iv), now (1)(a)(iii), to add a date restriction, which allows farm or residential motor fuel and heating oil tanks of 1,100 gallons or less capacity to use manual tank gauging conducted in accordance with ARM 17.56.407 instead of monitoring the tank every 30 days when the tank was

installed prior to the adoption of the rules on November 26, 2009, regarding installation and release detection requirements for the specified farm, residential, and heating oil tanks in accordance with the Energy Policy Act of 2005.

The department is proposing to amend (1)(b)(i)(B) and (1)(b)(ii) to require monitoring every 30 days rather than monthly to be consistent with 40 CFR Part 280.41 (July 15, 2015). The proposed amendments are necessary to change the monthly monitoring requirement to the more precise 30-day requirement.

The department is proposing to amend (3) to clarify that the exception from release detection requirements for terminal piping is limited to piping connected to aboveground storage tanks and not to tanks that are associated with airport hydrant systems. The proposed amendment also corrects the internal citation to ARM 17.58.204(2) to properly reference 17.56.204(2).

The department is proposing an amendment to (5) to update the reference to American Petroleum Institute Recommended Practice 1110, *Recommended Practice for Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide* and incorporate the most current version of that standard in the rule.

The department is proposing the above-described changes to include additional requirements and delete outdated requirements in order to better protect human health and the environment from leaks from petroleum underground storage tanks. The proposed changes are necessary to maintain consistency with 40 CFR Part 280.41, enable the department to meet federal stringency requirements, and maintain state program authorization.

17.56.403 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS (1) For hazardous substance UST systems installed after October 13, 2018, ~~O~~owners and operators ~~of hazardous substance UST systems~~ shall provide ~~release detection~~ containment that meets the following requirements and monitor these systems pursuant to ARM 17.56.407(1)(g) at least every 30 days:

~~(a) release detection at existing UST systems must meet the requirements for petroleum UST systems in ARM 17.56.402. All existing hazardous substance UST systems must meet the release detection requirements for new systems in (1)(b); and~~

~~(b) release detection at new hazardous substance UST systems must meet the following requirements as provided in 40 CFR 264.193, adopted by reference in this rule:~~

~~(i)~~ (a) secondary containment systems must be designed, constructed, and installed to:

~~(A)~~ (i) contain regulated substances ~~released~~ leaked from the ~~tank system~~ primary containment until they are detected and removed;

~~(B)~~ (ii) prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

~~(C)~~ (iii) be checked for evidence of a release at least every 30 days~~;~~.

~~(ii)~~ (b) double-walled tanks must be designed, constructed, and installed to:

~~(A)~~ (i) contain a ~~release~~ leak from any portion of the inner tank within the outer wall; and

~~(B)~~ (ii) detect the failure of the inner wall;

~~(iii)~~ (c) external liners (including vaults) must be designed, constructed, and installed to:

~~(A)~~ (i) contain 100 percent of the capacity of the largest tank within its boundary;

~~(B)~~ (ii) prevent the interference of precipitation or ground water intrusion with the ability to contain or detect a release of regulated substances; and

~~(C)~~ (iii) surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances)~~; and~~.

~~(iv)~~ (d) underground piping must be equipped with secondary containment that satisfies the requirements of (1)~~(b)(i)~~(a) (e.g., trench liners, ~~jacketing of~~ double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with ARM 17.56.408(1). ~~The department adopts and incorporates by reference 40 CFR 264.193, which sets forth standards for secondary containment and detection of releases of UST systems, a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238.~~

(2) For hazardous substance UST systems installed on or before October 13, 2018, owners and operators may use:

(a) other methods of release detection if owners and operators:

(i) demonstrate to the department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in ARM 17.56.407(1)(b)through (i) can detect a release of petroleum;

(ii) provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

(iii) obtain approval from the department to use the alternate release detection method before the installation and operation of the new UST system; or

(b) the methods of release detection set forth in 40 CFR 265.193 (2011), Containment and Detection of Releases.

(3) The department adopts and incorporates by reference 40 CFR 265.193 (2011), which sets forth standards for containment and detection of releases. A copy may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238. Copies are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to revise and update requirements for hazardous substance UST systems in ARM 17.56.403. The proposed amendments are necessary to ensure the requirements in ARM 17.56.403 are consistent with 40 CFR Part 280.42 (July 15, 2015).

The department is proposing to amend (1) to require hazardous substance UST systems installed after October 13, 2018, to have containment and monitoring consistent with ARM 17.56.407. The amendment is necessary to meet stringency requirements and to ensure the state's tank regulations protect human health and

the environment from undetected leaks from hazardous substance USTs. Under the 2015 regulations, EPA requires containment rather than release detection of hazardous substance UST systems. EPA determined that UST systems that store substances identified as being hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) are subject to the same requirements as petroleum UST systems, including secondary containment. However, release detection is not sufficient by itself for hazardous substances and thereby containment is necessary. The 2015 regulations require that the hazardous substance UST use interstitial monitoring for leak detection, which is required under ARM 17.56.407(1)(g). Interstitial monitoring will indicate the presence of a leak in the confined space between the first and the second wall.

The department is proposing to replace the term "leak" with "release," to be consistent with the 2015 federal UST regulations, which distinguish between the two terms. The definition for "release" under ARM 17.56.101(58) and 40 CFR 280.12 means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank system into ground water, surface water, surface soils, or subsurface soils. The 2015 UST federal regulations use the term "leak" when the substance is contained within the secondary containment and does not enter the environment.

The department is proposing an amendment by adding (2) to update and replace the standards for existing hazardous substance USTs, installed on or before October 13, 2018. New hazardous substance USTs, installed after October 13, 2018, are subject to the standards set forth in ARM 17.30.403(1).

Systems installed on or before October 13, 2018, may use alternate methods of release detection when the alternate method is as protective as the release detection methods for tanks specified in ARM 17.56.407(1)(b) through (i). Owners and operators must demonstrate to the department that the alternative leak detection method will work effectively by providing detailed studies of the site, proposed leak detection method, and available methods for corrective action.

These amendments are also intended to correct the formatting of the rule and update internal citations.

The department is proposing the above-described changes to ARM 17.56.403 to update the requirements for containment and monitoring for hazardous substance USTs. The amendments are necessary to better protect human health and the environment from leaks from hazardous substance storage tanks. The proposed changes are necessary to maintain consistency with 40 CFR Part 280.42, enable the department to meet federal stringency requirements, and maintain state program authorization.

17.56.407 METHODS OF RELEASE DETECTION FOR TANKS (1) Each method of release detection for tanks used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

(a) remains the same.

(b) manual tank gauging must meet the following requirements:

(i) through (iii) remain the same.

(iv) a ~~leak~~ release is suspected and subject to the requirements of ARM Title 17, chapter 56, subchapter 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

~~Nominal tank capacity | Weekly standard (one test) | Monthly standard (average of four tests)~~
~~550 gallons or less | 10 gallons | 5 gallons~~
~~551-1000 gallons | 13 gallons | 7 gallons~~
~~1001-2000 gallons | 26 gallons | 13 gallons~~

Table 1:

| **Nominal Tank Capacity** | **Minimum Duration Of Test** | **Weekly Standard (One Test)** | **Monthly Standard (Four Test Average)** |
|---|---|---|---|
| 550 gallons or less | 36 hours | 10 gallons | 5 gallons |
| 551-1,000 gallons (when tank diameter is 64 inches) | 44 hours | 9 gallons | 4 gallons |
| 551-1,000 gallons (when tank diameter is 48 inches) | 58 hours | 12 gallons | 6 gallons |
| 551 – 1,000 gallons (also requires periodic tank tightness testing) | 36 hours | 13 gallons | 7 gallons |
| 1,001 – 2,000 gallons (also requires periodic tank tightness testing) | 36 hours | 26 gallons | 13 gallons |

(v) tanks of 550 gallons or less nominal capacity and tanks with a nominal capacity of 551 to 1,000 gallons that meet the tank diameter criteria in Table 1 may use this method as the sole method of release detection. ~~Tanks of~~ All other tanks with a nominal capacity of 551 to 2,000 gallons may use the method in place of ~~manual~~ inventory control in (1)(a). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subchapter; and

(vi) and (c) remain the same.

(d) equipment for automatic tank gauging that tests for the loss of product or conducts inventory control must meet the following requirements:

(i) remains the same.

(ii) after December 31, 2010, if the automatic tank gauging equipment has the capability, the leak detection console must be set to temporarily disable the pumping system after a failed 0.2 gph leak test. The owner or operator may not restart the pumping system until:

(A) remains the same.

(B) the owner or operator determines that a release to the environment has not occurred; ~~and~~

(iii) inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of (1)(a); and

(iv) the test must be performed with the system operating in one of the following modes:

(A) in-tank static testing is conducted at least once every 30 days; or

(B) continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.

(e) testing or monitoring for vapors within the soil gas of the excavation zone may only be used as a leak detection method until October 13, 2023, to meet the requirements of ARM 17.56.402 and must meet the following requirements:

(i) through (viii) remain the same.

(f) testing or monitoring for liquids on the ground water may only be used as a leak detection method until October 13, 2023, to meet the requirements of ARM 17.56.402 and must meet the following requirements:

(i) through (viii) remain the same.

(ix) monitoring wells must be accessible for the sampling purposes of ARM 17.56.503; and

(x) remains the same.

(g) interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(i) remains the same.

(ii) for UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a ~~release~~ leak between the UST system and the secondary barrier;

(A) the secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least $10^{-6}$ cm/sec for the regulated substance stored) to direct a ~~release~~ leak to the monitoring point and permit its detection;

(B) the barrier is compatible with the regulated substance stored so that a ~~release~~ leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(C) through (F) remain the same.

(iii) for tanks with an internally fitted liner, an automated device can detect a ~~release~~ leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored; and

(h) release detection methods based on the application of statistical principles to inventory data must meet the following requirements:

(i) report a quantitative result with a calculated leak rate;

(ii) be capable of detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons within 30 days; and

(iii) use a threshold that does not exceed one-half the minimum detectible leak rate.

~~(h)~~ (i) any other type of release detection method, or combination of methods, can be used if it can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within ~~a month~~ 30 days with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(2) ~~An owner or operator of an UST who conducts interstitial monitoring as the primary leak detection method pursuant to this chapter shall document the communication of all sensors with the console at least monthly, and maintain the records on site for the previous 12 months.~~ UST systems installed, modified, or replaced after November 26, 2009, must employ interstitial monitoring and meet the requirements in [NEW RULE I](3), ARM 17.56.204, and applicable recordkeeping requirements in ARM 17.56.409.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing additional requirements and updating the manual tank gauging table (Table 1 in ARM 17.56.407(1)(b)(iv)) to add:

(1) a minimum test duration requirement;

(2) tank diameter to modify the acceptable standard variation for tanks having capacity between 551 and 1,000 gallons; and

(3) periodic tank tightness testing for tanks that do not meet the tank diameter requirement and are between 551 and 2,000 gallons. In (1)(b)(v) the tank diameter requirement from Table 1 is added as an additional restriction on tanks between 551 and 1,000 gallons that can use manual tank gauging as their sole release detection method. These proposed changes are necessary in order to provide clarity and be in accordance with 40 CFR Part 280.43 (July 15, 2015).

The department is proposing an amendment to (1)(d)(iv) to require inventory control tests for product loss from the tank to be conducted only when tanks are operating in the modes described in (1)(d)(iv)(A) and (B) in order to allow accurate measurement.

For the same reasons provided in the statement of reasonable necessity for ARM 17.56.403, the proposed amendment to ARM 17.56.407(1)(b)(iv) replaces the term "leak" with "release." The term "release" is the appropriate term because a release of regulated substance to the environment is suspected when a tank owner or operator employs manual tank gauging as a leak detection method and the variation between the beginning and ending measurement exceeds the applicable standard in Table 1 of the rule. A suspect release must then be reported and investigated as required in ARM Title 17, chapter 56, subchapter 5.

The department is also proposing to amend (1)(e) (vapor monitoring) and (1)(f) (ground water monitoring) to phase out these leak detection methods because these methods are unreliable and less protective than other available methods of leak detection for human health and the environment. Only a handful of Montana facilities regulated by the department utilize these methods and phasing out these practices within 5 years should provide sufficient time for impacted facilities to update their leak detection method with minimal economic impacts.

The department proposes the addition of (1)(h) allowing the use of leak detection methods that apply statistical inventory reconciliation consistent with 40 CFR 280.43(h) when the data meets the requirements set forth in (1)(h)(i) through (iii). Additionally, the proposed amendments at (1)(i) require the leak detection method to detect a release of 150 gallons within 30 days rather than the previous, less precise, requirement of detection within one month.

Finally, the department is proposing to amend (2) to delete recordkeeping requirements. The recordkeeping requirements are set forth in ARM 17.56.409 and restating the requirements in ARM 17.56.407(2) is duplicative. Section (2) is amended to require UST systems installed, modified, or replaced after November 26, 2009, to employ interstitial monitoring as the primary leak detection method as stated in ARM 17.56.204 so this requirement is not overlooked by the regulated community.

The proposed changes to ARM 17.56.407 allow the department to meet federal stringency requirements, maintain state program authorization, and protect human health and the environment from leaks from regulated tanks.

17.56.408 METHODS OF RELEASE DETECTION FOR PIPING (1) Each method of release detection for piping used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

(a) automatic line leak detectors, which include methods ~~which~~ that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm, may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour~~;~~

~~(b) an~~ and an annual test of the operation of the leak detector ~~must be~~ is conducted in accordance with ARM 17.56.401 ~~the manufacturer's requirements~~. If an automatic line leak detector fails the annual test at 3.0 gallons per hour at 10 pounds per square inch line pressure within 1 hour, it must be replaced ~~or retested at 5.0 gallons per hour. An automatic line leak detector must be replaced if it fails the 5.0 gallons-per-hour test~~;

~~(c)~~ (b) line tightness testing, including ~~a~~ periodic test of piping, may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at 1 1/2 times the operating pressure; and

~~(d)~~ (c) ~~any of the~~ tank methods ~~in ARM 17.56.407(1)(e) through (2) may be used if they are~~ designed to detect a release from any portion of the underground piping that routinely contains regulated substances. These methods include those set forth in ARM 17.56.407(1)(e) through (i) and (2).

(2) remains the same.

(3) An owner or operator of an UST system, existing prior to November 26, 2009, ~~who conducts~~ employing piping interstitial monitoring as the primary leak detection method pursuant to this chapter shall ~~conduct one of the following tests to determine liquid tightness:~~ meet the requirements of [NEW RULE I](3) and ARM 17.56.204.

~~(a) hydrostatically test all containment sumps once every three years with liquid for one hour to a height six inches above the highest sump penetration. A passing test must show no liquid loss measured during the testing interval;~~

~~(b) vacuum or pressure test containment sumps in accordance with the testing equipment manufacturer's instructions and pass/fail requirements; or~~

~~(c) functionally test containment sumps as recommended by the manufacturer of the containment sump.~~

(4) ~~An owner or operator who conducts a test pursuant to (3) shall report a failed test to the department.~~ UST systems installed, modified, or replaced after November 26, 2009, must employ piping interstitial monitoring and meet the requirements in [NEW RULE I](3) and ARM 17.56.204.

~~(5) Testing conducted pursuant to (3) must be accomplished by a licensed installer or compliance inspector pursuant to this chapter. Initial sump functional tests at each facility must be conducted prior to December 31, 2012.~~

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.408 to be in accordance with 40 CFR Part 280.44 (July 15, 2015). Most of the proposed changes are intended to make the rule more clear and readable. For example, the amendments to (1)(a) through (c) are necessary to separate the requirements pertaining to line leak detection methods. The requirements for automatic line leak detectors are organized under (1)(a); the requirements for line tightness testing are organized under (1)(b); and the leak detection requirements that are also suitable leak detection methods for tanks are organized under (1)(c).

The changes in (3) are necessary to set forth interstitial monitoring requirements and performance standards for UST systems installed prior to November 26, 2009, to be in accordance with the Energy Policy Act of 2005 (EPACT).

The changes in (4) are necessary to require UST systems installed, modified, or replaced after November 26, 2009, to employ interstitial monitoring as the leak detection method for piping and meet the requirements in New Rule I(3) and in ARM 17.56.204 in accordance with 40 CFR Part 280.44 (July 15, 2015).

Finally, (3) and (5) are amended to delete the testing requirements for secondary containment. These requirements are set forth in New Rule I(3) and repeating them in ARM 17.56.408 would be unnecessarily duplicative. The proposed amendments are necessary for consistency with 40 CFR Part 280.44, to enable the department to meet federal stringency requirements, maintain state program authorization, and better protect human health and the environment.

17.56.409 RELEASE DETECTION RECORDKEEPING (1) All UST system owners and operators shall maintain records in accordance with ARM 17.56.305 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

(a) remains the same.

(b) the results of any sampling, testing, or monitoring must be maintained for at least one year, or another reasonable period of time determined by the department, except ~~that the results of tank tightness testing conducted in accordance with ARM 17.56.407(1)(c) must be retained until the next test is~~

~~conducted; and~~ as follows:

(i) the results of annual tests of proper operation of leak detection equipment conducted in accordance with ARM 17.56.401(2) must be maintained for three years minimum. The results must list each component tested, indicate whether each component tested meets the criteria in ARM 17.56.401(2) or needs to have action taken, and describe any action taken to correct an issue;

(ii) the results of tank tightness testing conducted in accordance with ARM 17.56.407(1)(c) must be retained until the next test is conducted; and

(iii) the results of line tightness testing and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with [NEW RULE IV](1)(a)(iii) must be retained until the next test is conducted;

~~(c)~~ (iv) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed~~.~~, or for another reasonable time period determined by the department; and

(v) ~~A~~any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for ~~the operating life of the release detection system~~ five years from the date of installation.

(c) an owner or operator of an UST system existing prior to November 26, 2009, who conducts interstitial monitoring as the primary leak detection method pursuant to this subchapter shall document the communication of all sensors with the console at least monthly, and maintain the record onsite of each monthly sensor test for the previous 12 months.

(d) UST systems installed, modified, or replaced after November 26, 2009, shall document the communication of all sensors with the console at least monthly, and maintain the record onsite of each monthly sensor test for the previous 12 months.

(e) UST systems installed, modified or replaced after October 13, 2018, shall maintain records of site assessments conducted under ARM 17.56.407(1)(e) or (f) as long as the leak detection methods are used.

(f) Records of site assessments conducted under ARM 17.56.407(1)(e) or (f) after October 13, 2018, must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.409 to be in accordance with 40 CFR Part 280.45 (July 15, 2015). The department is proposing the following specific amendments to its leak detection recordkeeping requirements:

(1) To amend (1)(b) to allow the department more flexibility in determining retention of sampling, monitoring, and testing results as appropriate. The proposed amendments to (1)(b) also include additional requirements in (1)(b)(i) through (v) to state some exceptions to the one-year record retention requirement in (1)(b) and providing:

(i) a three-year maintenance period for leak detection operation test results;

(ii) a requirement that tank tightness test results be retained until the next test is conducted;

(iii) a requirement that line tightness test results and vapor monitoring results conducted under New Rule IV are retained until the next test is conducted;

(iv) a requirement that written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the department; and

(v) a requirement that any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation.

(2) To add (1)(c) and (d) to require owners and operators of existing and new UST systems to document sensor communication when interstitial monitoring is the primary leak detection method and retain the records for each monthly test of leak detection equipment for the previous 12-month period.

(3) To add (1)(e) and (f) to maintain records of site assessments conducted when vapor monitoring or ground water monitoring leak detection methods are used at an UST facility and retain the records for as long as these leak detection methods are used. Additionally, site assessments conducted after October 13, 2018, must be signed by a professional engineer, professional geologist, or other licensed professional.

The proposed amendments are necessary to enable the department to meet federal stringency requirements, maintain state program authorization, and be more protective of human health and the environment by ensuring documentation and maintenance of records of proper operation and maintenance of leak detection equipment. The proposed amendments also provide better organization of the rules and make it easier for the regulated community to understand recordkeeping requirements in a logical sequence.

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the department or to the 24-hour Disaster and Emergency Services duty officer available at telephone number (406) 324-4777 within 24 hours of discovery of the existence of any of the following conditions:

(a) through (f) remain the same.

(g) an unexplained presence of water in the tank or liquid in the interstitial space between the tank and the tank secondary containment;

(h) through (2) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.502 by

including the broader term "liquid" in (1)(g) to include discovery of water, petroleum product, or other substances in the liquid-phase in the interstitial space as a condition that must be treated as a suspect release. Any liquid in the interstitial space indicates a problem that must be investigated and resolved. The 2015 federal UST regulations specify detection of liquid in the interstitial space as an unusual operating condition that UST owners and operators are required to investigate. It is necessary to amend ARM 17.56.502 to include the word "liquid" in (1)(g) to maintain consistency with 40 CFR Part 280.50 and enable the department to meet federal stringency requirements, maintain state program authorization, and be more protective of human health and the environment.

17.56.504 RELEASE INVESTIGATION AND CONFIRMATION STEPS

(1) Unless corrective action is initiated in accordance with ARM Title 17, chapter 56, subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under ARM 17.56.502, within seven days of the discovery of the condition identified in ARM 17.56.502, using either of the following steps, unless both are required by the language of this rule:

(a) Owners and operators must conduct tests (according to the requirements for tightness testing in ARM 17.56.407 and 17.56.408 or, as appropriate, secondary containment testing in ARM 17.56.304(3)(f)(iii)) that determine whether a leak exists in any portion of the tank that routinely contains product, or the attached delivery piping, or both.

(i) Owners and operators must immediately repair, replace, ~~or~~ upgrade, or close the PST or UST system, and begin corrective action in accordance with ARM Title 17, chapter 56, subchapter 6 if the test results for the system, tank, or delivery piping indicate that a ~~leak~~ release exists.

(ii) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a ~~leak~~ release exists and if environmental contamination is not the basis for suspecting a release.

(iii) and (b) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to amend (1)(a) to include the requirement to tightness test secondary containment in addition to the tank and piping tightness testing that must be conducted in response to a suspect release from an UST or petroleum storage tank (PST) system. The proposed change is necessary to require thorough system testing and rule out the presence of a release of regulated substance from the UST.

In addition, the department is proposing amendment of (1)(a)(i) to add closure of a tank system to the requirements to repair, replace, or upgrade a PST or UST system in response to a release.

Finally, for the reasons stated in the reasons statement for the proposed amendments to ARM 17.56.403, the department is proposing to replace the term "leak" with "release," to indicate situations where petroleum product from the UST

system may enter the environment.

The department's proposed amendments are necessary to be in accordance with 40 CFR 280.52 (July 15, 2015), to enable the department to meet federal stringency requirements, maintain state program authorization, and better protect human health and the environment.

17.56.701 INACTIVE AND OUT-OF-SERVICE UST SYSTEMS (1) An UST system is inactive when the owner or operator notifies the department that the UST is no longer in use for dispensing, depositing, or storing regulated substances or the department determines inactive status based on available information. The owner or operator shall continue operation and maintenance of corrosion protection on an out-of-service UST in accordance with ARM 17.56.302, and shall continue operation and maintenance of any release detection in accordance with ARM Title 17, chapter 56, subchapter 4. ARM Title 17, chapter 56, subchapters 5 and 6 must be complied with if a release is suspected or confirmed. However, release detection, ~~is~~ release detection operation, and maintenance testing and inspections in ARM Title 17, chapter 56, subchapter 3 and 4 are not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3~~%~~ percent by weight of the total capacity of the UST system, remains in the system. In addition, spill and overfill operation and maintenance testing and inspections in subchapter 3 are not required.

(2) through (4) remain the same.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-505, 75-11-509, MCA

REASON: The department is proposing amendments to (1) to clarify maintenance and operation requirements for inactive systems in accordance with 40 CFR 280.70 (July 15, 2015). The department is proposing to amend (1) to clarify that release detection, release detection operation and maintenance testing, and equipment inspections required in ARM Title 17, chapter 56, subchapters 3 and 4 are not required for empty, inactive UST systems because an UST that has been emptied in accordance with this rule will not have active leaks or new releases. Additionally, it is necessary to add language in (1) to clarify that spill and overfill operation and maintenance testing and equipment inspections required in ARM Title 17, chapter 56, subchapter 3 are not required for inactive UST systems because, by definition, these systems are not receiving and dispensing and will not have new spills or overfills while in inactive status. Finally, the symbol for percent is replaced with the word in accordance with state rule writing standards.

The proposed amendments are necessary for consistency with 40 CFR 280.70, to enable the department to meet federal stringency requirements, maintain state program authorization, and better protect human health and the environment by ensuring inactive and out of service USTs are properly emptied and maintained.

17.56.702 PERMANENT CLOSURE AND CHANGES IN SERVICE

(1) through (4) remain the same.

(5) The department adopts and incorporates by reference the version in effect on January 1, ~~2016~~ 2018, of the following standards, specifications, and publications:

(a) American Petroleum Institute Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks," (2015), which sets forth closure practices for UST systems, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," (2001), which sets forth lining and periodic inspection ~~entrance~~ standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(c) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning," (2015), which sets forth cleaning and entrance standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

~~(c)~~ (d) The National Institute for Occupational Safety and Health publication No. 80-106, "Criteria for a Recommended Standard: Working in Confined Space," (1979), which sets forth standards for working inside an UST tank, a copy of which may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238;

~~(d)~~ (e) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks," (2016), which sets forth entrance and cleaning standards for UST tanks, a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

~~(e)~~ (f) National Fire Protection Association (NFPA) Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair," (2015), which sets forth procedures to safeguard tanks or containers that contain or have contained flammable and combustible liquids or other hazardous substances before entry, cleaning, repair, or other activities can be performed, a copy of which may be obtained ~~at: http://www.nfpa.org/codes-and-standards or from the NFPA at 11 Tracy Drive, Avon, MA 02322, 1 (800) 344-3555~~ from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, (800) 344-3555.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing amendments to (5) to update the standards, work practices, specifications, and publications incorporated by reference by the department to control permanent closure and change in service of USTs in accordance with 40 CFR Part 280 (July 15, 2015).

The department is proposing amendments as follows:

(1) At (5)(a), to add the most current date of American Petroleum Institute Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks;"

(2) At (5)(b) to add the most current date of American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks" and more specifically reference the standards provided by that work practice;

(3) At (5)(c) to add American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry from Decommissioning Through Recommissioning," (2015), to provide cleaning and entrance standards for UST tanks;

(4) At (5)(d) to add the most current date of National Institute for Occupational Safety and Health publication No. 80-106, "Criteria for a Recommended Standard: Working in Confined Space;"

(5) At (5)(e) to add the most current date of American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks," and to add language to more specifically reference the standards provided by that work practice; and

(6) At (5)(f) to add the most current date of the National Fire Protection Association (NFPA) Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair," and to more specifically reference the standards provided by that work practice.

It is necessary that the department update the above-referenced standards, specifications, and publications incorporated by reference in (5) and adopt the new standard reference at ARM 17.56.705(5)(c) to enable the department to meet federal stringency requirements, maintain state program authorization, and be more protective of human health and the environment.

17.56.801 APPLICABILITY (1) remains the same.

(2) Owners and operators of petroleum UST systems are subject to these requirements ~~if they are in operation on or after the date for compliance~~ established in accordance with ARM 17.56.802.

(3) and (4) remain the same.

(5) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. ~~Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in ARM 17.56.802.~~

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to delete the compliance dates referenced in (2) and (5) because these dates are eliminated upon the effective date of these rules. These changes are necessary to provide clarity regarding the applicability of ARM Title 17, chapter 56, subchapter 8 in accordance with 40 CFR Subpart H (280.90 – 280.116) (July 15, 2015). The proposed changes are necessary to delete obsolete language and enable the department to meet federal stringency requirements, maintain state program authorization, and be more

protective of human health and the environment.

17.56.802 COMPLIANCE DATES (1) Owners of petroleum underground storage tanks ~~are required to~~ must comply with the requirements of this subchapter ~~by the following dates:~~. Previously deferred UST systems must comply with the schedule according to [NEW RULE IV](1)(a).

~~(a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; effective date of this rule.~~

~~(b) All petroleum marketing firms owning 100-999 USTs; effective date of this rule.~~

~~(c) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1990.~~

~~(d) All petroleum UST owners not described in (a), (b), or (c), including all local government entities; October 26, 1990.~~

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to delete the compliance dates and schedules in ARM 17.56.802 because the compliance dates for petroleum marketing firms passed more than a decade ago. Therefore, it is no longer necessary to maintain the dates or the term "petroleum marketing firm" in these rules. These changes are necessary to provide clarity regarding the applicability of ARM Title 17, chapter 56, subchapter 8 in accordance with 40 CFR Subpart H (280.90 – 280.116) (July 15, 2015). It is also necessary to provide the compliance dates in New Rule IV for previously deferred UST systems for consistency with 40 CFR Part 280.91. The proposed changes are necessary to enable the department to meet federal stringency requirements, maintain state program authorization, and be more protective of human health and the environment.

17.56.803 DEFINITION OF TERMS For the purposes of this subchapter, the following terms have the meanings given in this rule:

(1) "Accidental release" means any sudden or nonsudden release of petroleum arising from an operating underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(2) remains the same.

(3) "Chief financial officer" means the individual with overall authority and responsibility for collection, disbursement, and use of funds by an entity. In the case of local government owners and operators, chief financial officer means the individual with overall authority and responsibility for collection, disbursement, and use of funds by the local government.

(3) and (4) remain the same, but are renumbered (4) and (5)

~~(5)~~ (6) "Financial reporting year" means the latest consecutive 12-month

period for which any of the following reports used to support a financial test is prepared and may comprise a fiscal or a calendar year period:

(a) and (b) remain the same.

(c) annual reports submitted to the Energy Information Administration or the Rural ~~Electrification Administration~~ Utilities Service. ~~"Financial reporting year" may thus comprise a fiscal or a calendar year period.~~

(6) remains the same, but is renumbered (7).

(8) "Local government" shall have the meaning given this term by applicable state law and, for purposes of this subchapter only, includes Indian tribes. The term is generally intended to include:

(a) counties, intergovernmental bodies, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and

(b) special districts and independent school districts established by counties, municipalities, townships, and other general-purpose governments to provide essential services.

(7) through (9) remain the same but are renumbered (9) through (11).

~~(10) "Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.~~

(11) through (13) remain the same, but are renumbered (12) through (14).

(15) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(14) remains the same, but is renumbered (16).

(17) "Termination" means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

(15) and (16) remain the same, but are renumbered (18) and (19).

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to amend the definitions adopted for purposes of interpretation and implementation of ARM Title 17, chapter 56, subchapter 8 for consistency with 40 CFR 280.92 (July 15, 2015). It is necessary to amend the definition of "accidental release" at (1) to clarify that an accidental release, for which financial responsibility must be demonstrated under these rules, is any sudden or nonsudden release of petroleum that arises from operation of an UST and results in the need for corrective action and/or compensation for bodily injury or

property damage that was neither expected nor intended by the tank owner or operator.

For purposes of interpretation and implementation of ARM Title 17, chapter 56, subchapter 8, it is necessary to add a definition of "chief financial officer" at (3) because many entities that own and operate tanks are business or governmental entities and it is necessary to define the person with authority to make financial commitments on behalf of the entity.

It is necessary to add a definition of "financial reporting year" at (6) because this timeframe is necessary to determine tangible net worth of business and governmental entities owning and operating tanks.

It is necessary to add a definition of "local government" at (8) because many entities that own and operate tanks are local governmental entities and the department needs to apply a definition that is consistent with state law and, for purposes of this subchapter, that includes Indian tribes.

It is necessary to delete the term "petroleum marketing firm" because the term was used in the context of the compliance dates in ARM 17.56.802, which will be eliminated with these proposed rules amendments, making the term obsolete. See the reasons for deletion of compliance dates under the statement of reasonable necessity for ARM 17.56.802.

It is necessary to add a definition of "substantial governmental relationship" at (15) because, with these proposed amendments, the department is proposing to incorporate 40 CFR 280.106 by reference. That regulation allows a local government tank owner or operator to satisfy its financial responsibility requirements under these rules by obtaining a guarantee when the guarantor is either the state or a local government having a substantial governmental relationship with the tank owner or operator.

It is necessary to add a definition of "termination" at (17) because the term is used in this subchapter to describe situations where the owner or operator may have gaps in meeting the financial responsibility requirements of these rules.

The proposed rule amendments are necessary to incorporate definitions that clarify terms used throughout ARM Title 17, chapter 56, subchapter 8, enable the department to meet federal stringency requirements, maintain state program authorization, and protect human health and the environment.

17.56.807 FINANCIAL TEST OF SELF-INSURANCE (1) An owner or operator, and/or guarantor, may satisfy the requirements of ARM 17.56.805 by passing a financial test as specified in this rule. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of (2) ~~or~~ through ~~(3)~~ (7) of this rule based on year-end financial statements for the latest completed fiscal year.

~~(2)(a)~~ (2) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) remains the same but is renumbered (a).

~~(ii)~~ (b) the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, 264.143, 264.145, 264.147, 265.143, ~~165.145,~~ 265.145, ~~264.147,~~ and

265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

(iii) remains the same but is renumbered (c).

(b) and (c) remain the same but are renumbered (3) and (4).

~~(d)~~ (5) The owner or operator, and/or guarantor, must either:

~~(i)~~ (a) file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural ~~Electrification Administration~~ Utilities Service; or

(ii) remains the same but is renumbered (b).

(e) remains the same but is renumbered (6).

~~(3)(a)~~ (7) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in ARM 17.56.805(2)(a) and (b) for the "amount of liability coverage" each time specified in that section.

(b) through (d) remain the same but are renumbered (a) through (c).

~~(e)~~ (d) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities Exchange Commission, the Energy Information Administration or the Rural ~~Electrification Administration~~ Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) and (ii) remain the same.

~~(4)~~ (8) To demonstrate that it meets the financial test under (2) ~~or~~ through ~~(3)~~ (7) of this rule, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instruction in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under 40 CFR 280.95 by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under 40 CFR 280.95. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under 40 CFR 280.95 by the tank identification number provided in the notification number provided in the notification submitted pursuant to 40 CFR 280.22 or ARM 17.56.902.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

| EPA Regulations | Amount |
|---|---|
| Closure (264.143 and 265.143) | $_____ |
| Post-Closure Care (264.145 and 265.145) | $_____ |
| Liability Coverage (264.147 and 265.147) | $_____ |
| Corrective Action (264.101(b) | $_____ |
| Plugging and Abandonment (144.63) | $_____ |
| Closure | $_____ |
| Post-Closure Care | $_____ |
| Liability Coverage | $_____ |
| Corrective Action | $_____ |
| Plugging and Abandonment | $_____ |
| Total | $_____ |

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer or opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of ARM 17.56.807(2) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of ARM 17.56.807(3) are being used to demonstrate compliance with the financial test requirements.]

Alternative I

| | | | |
|---|---|---|---|
| 1. | Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee | $_____ | |
| 2. | Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee | $_____ | |
| 3 | Sum of lines 1 and 2 | $_____ | |
| 4. | Total tangible assets | $_____ | |
| 5. | Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] | $_____ | |
| 6. | Tangible net worth [subtract line 5 from line 4] | $ _____ | |
| | | Yes | No |
| 7. | Is line 6 at least $10 million? | ___ | ___ |
| 8. | Is line 6 at least 10 times line 3? | ___ | ___ |
| 9. | Have financial statements for the latest fiscal year been filed with the Securities | | |

and Exchange Commission?..... ___ ___

10. Have financial statements for the latest year been filed with the Energy Information Administration?..... ___ ___

11. Have financial statements for the latest fiscal year been filed with the Rural ~~Electrification Administration~~ Utilities Service?..... ___ ___

12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] ..... ___ ___

Alternative II

1. Amount of annual UST aggregate coverage being assured by a test, and/or guarantee .....$_____

2. Amount of corrective action, closure and post-closure care costs, liability coverage and plugging and abandonment costs covered by a financial test, and/or guarantee ..... $_____

3. Sum of lines 1 and 2 ..... .....$_____

4. Total tangible assets .....$_____

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] .....$_____

6. Tangible net worth [subtract line 5 from line 4] .....$_____

7. Total assets in the US [required only if less than 90% of assets are located in the US .....$_____

| | | Yes | No |
|---|---|---|---|
| 8. | Is line 6 at least $10 million? ..... | ___ | ____ |
| 9. | Is line 6 at least 6 times line 3? ..... | ___ | ____ |
| 10. | Are at least 90% of assets located in the US [If "No," complete line 11.] ..... | ___ | ____ |
| 11. | Is line 7 at least 6 times line 3? ..... | ___ | ____ |

[Fill in either lines 12-15 or lines 16-18:]

12. Current assets .....$_____

13. Current liabilities ..... .....$_____

14. Net working capital [subtract line 13 from line 12] .....$_____

| | | Yes | No |
|---|---|---|---|
| 15. | Is line 14 at least 6 times line 3? ..... | ___ | ____ |
| 16. | Current bond rating of most recent bond issue ..... | ___ | ____ |

17. Name of rating service ..... .....___ ____
18. Date of maturity of bond .....___ ____
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural ~~Electrification Administration~~ Utilities Service? ..... .....___ ____

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in ARM 17.56.807(4) as such rule was constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(5) remains the same, but is renumbered (9).

~~(6)~~ (10) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of ~~(2) or (3)~~ (5) through (7) and ~~(4)~~ (8) ~~of this rule~~, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(7) remains the same, but is renumbered (11).

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.807 by deleting outdated terminology and updating the rule in accordance with 40 CFR 280.95 (July 15, 2015). The entity previously known as the Rural Electrification Administration has been renamed the Rural Utilities Service and the proposed amendments are necessary to make this correction.

The department is also correcting a typographical error in (2)(a)(ii) that should have cited 40 CFR 265.145 and erroneously cited 40 CFR 165.145.

Finally, the department is renumbering the rule in accordance with current state rule writing standards and correcting the internal references that changed due to renumbering. The proposed rule amendments are necessary to enable the department to meet federal stringency requirements, maintain state program authorization, and protect human health and the environment.

17.56.808 GUARANTEE (1) remains the same.

(2) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of ARM 17.56.807 based on

year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in ARM 17.56.807~~(4)~~(8)and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that he no longer meets the requirements of the financial test of ARM 17.56.807~~(2)~~(5) ~~or (3)~~ through (7) and ~~(4)~~(8), the guarantor must notify the owner or operator within ten days of receiving such notification from the director. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in ARM ~~17.56.828~~ 17.56.827(3).

(3) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Montana Department of Environmental Quality and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of ARM 17.56.807~~(2) or (3)~~ (5) through (7) and ~~(4)~~(8) and agrees to comply with the requirements for guarantors as specified in ARM 17.56.808(2).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies ARM Title 17, chapter 56, subchapter 8 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating and above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if grantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related form of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Montana Department of Environmental Quality and to any and all third parties

that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Director of the Montana Department of Environmental Quality has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Director, shall fund a standby trust fund in accordance with the provisions of ARM 17.56.824, in an amount not to exceed the coverage limits specified above.

In the event that the Director determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with ARM Title 17, chapter 56, subchapter 6, the guarantor upon written instructions from the Director shall fund a standby trust in accordance with the provisions of ARM 17.56.824, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Director, shall fund a standby trust in accordance with the provisions of ARM 17.56.824 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of ARM 17.56.807(2) ~~(4)~~ through (7) and (8), the guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), US Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to ARM Title 17, chapter 56.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of ARM Title 17, chapter 56, subchapter 8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) any obligation of [insert owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Montana Department of Environmental Quality, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in ARM 17.56.808(3) as such rule was constituted on the effective date shown immediately below.

Effective date:_____

[Name of guarantor]

[Authorized signature for guarantor]

[name of person signing]

[Title of person signing]

Signature of witness or notary:

_____

(4) remains the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to correct a typographical error in ARM 17.56.808(2) to change the reference from ARM 17.56.828(3) to 17.56.827(3) and correct internal references made necessary by renumbering ARM 17.56.807.

17.56.809 INSURANCE AND RISK RETENTION GROUP COVERAGE

(1) remains the same.

(2) Each insurance policy must be amended by an endorsement worded as specified in (a) below, or evidenced by a certificate of insurance worded as specified in (b) below, except that instruction in brackets must be replaced with the relevant information and the brackets deleted:

(a) Endorsement

Name: [name of each covered location]

_____

_____

Address: [address of each covered location]

_____

_____

Policy Number:_____
Period of Coverage: [current policy period]

_____

_____
Name of [Insurer or Risk Retention Group]:

_____

_____
Address of [Insurer or Risk Retention Group]:

_____

_____
Name of Insured:_____
Address of Insured:

_____

_____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided however, that any provisions inconsistent with (a)-(e) of this paragraph 2 are hereby amended to conform with (a)-(e).

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that

amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in ARM 17.56.807 through 17.56.811, 17.56.815 through 17.56.817, and [NEW RULE III](1)(a) through (1)(d).

c. Whenever requested by the Director, the ["Insurer" or "Group"] agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" "Group"] within 6 months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in ARM 17.56.809(2)(a) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]
[Name of person signing]
[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(b) and (3) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to add the financial assurance mechanisms in New Rule III(1)(a) through (d) to ensure that the provision in ARM 17.56.809(1)(b) does not apply with respect to the amount of any deductible for which coverage is demonstrated under another mechanism, including the new mechanisms added under New Rule III(1)(a) through (d), which include: local government bond rating test; local government financial test; local government guarantee and local government fund. The proposed amendment is necessary to ensure consistency between ARM 17.56.809 and 40 CFR 280.97, enable the department to meet federal stringency requirements, maintain state program authorization, and protect human health and the environment.

17.56.810 SURETY BOND (1) remains the same.

(2) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond
Date bond executed:_____
Period of coverage:_____
Principal: [legal name and business address of owner or operator]
_____
Type of organization: [insert "individual," "joint venture," "partnership," or

"corporation"]

_____

State of incorporation (if applicable):

_____

Surety(ies): [name(s) and business address(es)]

_____

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:
Per occurrence $_____
Annual aggregate $_____
Surety's bond number:_____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I ~~of~~ to the Resource Conservation and Recovery Act (RCRA) amending the Solid Waste Disposal Act, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with ARM Title 17, chapter 56, subchapter 6, and the Director of the Montana Department of Environmental Quality's instructions for," and/or "compensate injured third parties for bodily injury

and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in ARM Title 17, chapter 56, subchapter 4, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) through (4) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to amend language in ARM 17.56.810(2) in accordance with 40 CFR 280.98 (July 15, 2015). The amendment is necessary to more accurately reference the Resource Conservation and Recovery Act, as an amendment to the original Solid Waste Disposal Act.

17.56.811 LETTER OF CREDIT (1) remains the same.

(2) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit
[Name and address of issuing institution]
Director
Montana Department of Environmental Quality
PO Box 200901, Metcalf Building
Helena, Montana 59620-0901
Attn: UST Program

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No._____in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] US dollars ($[insert dollar amount]), available upon presentation by you of

(1) your sight draft, bearing reference to this letter of credit, No. _____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I ~~of~~ to the Resource Conservation and Recovery Act (RCRA) amending the Solid Waste Disposal Act ~~of 1976~~, as amended and the applicable state laws and rules."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $[insert dollar amount] per occurrence and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument,

list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) through (4) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to amend language in ARM 17.56.811(2) in accordance with 40 CFR 280.99 (July 15, 2015). The amendment is necessary to more accurately reference the Resource Conservation and Recovery Act, as an amendment to the original Solid Waste Disposal Act.

17.56.821 CANCELLATION OR NONRENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE (1) remains the same.

(2) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in ARM 17.56.822, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the director of such failure and submit:

(a) and (b) remain the same.

(c) the evidence of the financial assistance mechanism subject to the termination maintained in accordance with ARM ~~17.56.824(2)~~ 17.56.823(2).

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The proposed amendment to ARM 17.56.821 is necessary for the department to correct a typographical error in (2)(c).

17.56.1301 DEFINITIONS For the purposes of ARM Title 17, chapter 56, subchapters 13 and 14 and unless otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with the definitions in subchapter 1 of this chapter and those in 75-11-203 and 75-11-503, MCA:

(1) through (7) remain the same.

(8) "Minor installation" means the installation of replacement spill buckets, offset sleeves on tank risers, boots on piping flex connectors, ~~ball-float vent valves in existing risers,~~ drop-tubes, drop-tube shut-off valves and auto dialers, and the extension or replacement of vent standpipes. Minor installation also includes the decommissioning of groundwater and vapor leak detection monitoring wells.

(9) through (11) remain the same.

AUTH: 75-11-204, 75-11-505, MCA
IMP: 75-11-204, 75-11-209, 75-11-210, 75-11-212, 75-11-509, MCA

REASON: The department is proposing to amend ARM 17.56.1301(8) (Underground Storage Tank Permitting) by deleting the reference to "ball float vent valves in existing risers" in the context of "minor installation" because ball float vent valves will no longer be acceptable spill and overfill equipment on new tank systems or tank systems modified after the effective date of these rules. This amendment is necessary for consistency with 40 CFR 281.30 (July 15, 2015). The proposed amendment will enable the department to be as stringent as the federal government, maintain state program authorization, and better protect human health and the environment from spills and overfills from UST systems.

5. The rules proposed to be adopted are as follows:

NEW RULE I PERIODIC TESTING OF SPILL PREVENTION EQUIPMENT AND CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING AND PERIODIC INSPECTION OF OVERFILL PREVENTION EQUIPMENT

(1) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet the following requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(a) containment sumps used for interstitial monitoring of piping and spill prevention equipment, such as a catchment basin, spill bucket, or other spill containment device, must prevent releases to the environment by meeting one of the following:

(i) the equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in [NEW RULE II]. Owners and operators must begin meeting (1)(a) and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

(ii) the spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(A) requirements developed by the manufacturer only if the manufacturer has developed requirements;

(B) code of practice developed by a nationally recognized association or independent testing laboratory; or

(C) requirements determined by the department to be no less protective of human health and the environment than the requirements listed in (1)(a)(ii)(A) and (B) or follow one of the department-approved methods listed below:

(I) hydrostatically test all containment sumps once every three years with liquid for one hour to a height six inches above the highest sump penetration. A passing test must show no liquid loss measured during the testing interval; or

(II) vacuum or pressure test containment sumps in accordance with the testing equipment manufacturer's instructions and pass/fail requirements.

(2) Testing conducted pursuant to (1) must be accomplished by a licensed installer or compliance inspector.

(3) Failed tests pursuant to (1) shall be reported to the department in accordance with ARM Title 17, chapter 56, subchapter 5.

(4) Overfill prevention equipment and containment sumps used for interstitial monitoring of piping must be inspected at least once every three years and meet the following:

(a) at a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in ARM 17.56.201(1)(c) and will activate when regulated substance reaches that level; and

(b) inspections must be conducted in accordance with one of the criteria in (1).

(5) The code of practice from Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities." may be used to comply with (1).

(6) Owners and operators must begin meeting these requirements for UST systems in use on or before October 13, 2018. The initial spill prevention equipment test, containment sump test, and overfill prevention equipment inspection must be conducted no later than October 13, 2021.

(7) For UST systems brought into use after October 13, 2018, these requirements apply at installation:

(a) owners and operators must maintain records in accordance with ARM 17.56.305 for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment;

(b) all records of testing or inspection must be maintained for three years; and

(c) for spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-505, 75-11-509, MCA

REASON: The department is proposing New Rule I to be in accordance with 40 CFR Part 280.35 (July 15, 2015). New Rule I requires regular testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping to ensure protection of human health and the environment from undetected spills and overfills and ensure containment sumps are working properly and not allowing product to be released into the environment. Periodic inspection of overfill prevention equipment also ensures that the equipment is working properly and not allowing product to be released into the environment. New Rule I is proposed to meet new testing and inspection requirements under the new 2015 amendments to the UST federal regulations, enable the department to meet federal stringency requirements, maintain state program authorization, and better protect human health and the environment from spills and overfills from UST systems.

NEW RULE II PERIODIC OPERATION AND MAINTENANCE WALKTHROUGH INSPECTIONS (1) To properly operate and maintain UST systems, no later than October 13, 2021, owners and operators must meet one of the following:

(a) conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:

(i) every 30 days, except spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery:

(A) visually check spill prevention equipment for damage;

(B) remove liquid or debris;

(C) check for and remove obstructions in the fill pipe;

(D) check the fill cap to make sure it is securely on the fill pipe;

(E) for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area;

(F) check release detection equipment to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and

(G) ensure records of release detection testing are reviewed and current; and

(ii) on an annual basis, the following must be checked:

(A) visually check containment sumps for damage, leaks to the containment area, or releases to the environment; remove liquid (in contained sumps) or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area;

(B) check hand held release detection equipment such as tank gauge sticks or groundwater bailers for operability and serviceability; and

(C) conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to (1)(a); or

(b) use the following code of practice to comply with (1): Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems."

(2) Conduct operation and maintenance walkthrough inspections developed by the department that checks equipment comparable to (1).

(3) Owners and operators must maintain records in accordance with ARM 17.56.305 of operation and maintenance walkthrough inspections for one year.

(a) Records must include:

(i) a list of each area checked;

(ii) whether each area checked was acceptable or needed action taken;

(iii) a description of actions taken to correct an issue; and

(iv) delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing New Rule II to be in accordance with

40 CFR Part 280.36 (July 15, 2015). New Rule II requires periodic walkthrough inspections to make sure equipment is working properly and to catch problems early to protect human health and the environment. Adoption of New Rule II is necessary to meet the new monthly maintenance walkthrough inspection requirements under the 2015 amendments to the UST federal regulations, enable the department to meet federal stringency requirements, maintain state program authorization, and better protect human health and the environment.

NEW RULE III INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following provisions contained within the final rules published in the Federal Register at 40 CFR Parts 280 and 281 on July 15, 2015:

(a) Code of Federal Regulations (CFR) 280.104 Local government bond rating test;

(b) CFR 280.105 Local government financial test;

(c) CFR 280.106 Local government guarantee;

(d) CFR 280.107 Local government fund;

(e) CFR 280.200 Definitions;

(f) CFR 280.210 Participation in management;

(g) CFR 280.220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located; and

(h) CFR 280.230 Operating an underground storage tank or underground storage tank system.

(2) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at https://www.gpo.gov. Materials adopted and incorporated by reference in this subchapter are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

(3) Where exceptions to incorporated federal regulations are necessary, these exceptions are noted in the rules.

(4) Cross-references within federal regulations adopted and incorporated by reference in these rules refer to the cross-referenced provision as adopted and incorporated by reference in this subchapter with any indicated additions and exceptions.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to incorporate by reference 40 CFR 280.104 through 107, 280.200, 280.210, 280.220, and 280.230 to provide owners and operators with additional financial mechanisms to meet their financial responsibility requirements in accordance with revisions to 40 CFR Parts 280 and 281 published July 15, 2015. Incorporating the above-listed CFRs by reference is necessary to enable the department to be as stringent as the federal government, maintain state program authorization, and better protect human health and the

environment from impacts caused by releases from USTs.

NEW RULE IV UST SYSTEMS WITH FIELD CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following provisions contained within the final rules published in the Federal Register at 40 CFR Parts 280 and 281 published on July 15, 2015:

(a) Subpart K-UST Systems with Field Constructed Tanks and Airport Hydrant Fuel Distribution Systems;

(i) CFR 280.250 Definitions;

(ii) CFR 280.251 General Requirements; and

(iii) CFR 280.252 Additions, Exceptions and Alternatives for UST systems with field constructed tanks and airport hydrant systems.

(2) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at https://www. gpo.gov. Materials adopted and incorporated by reference in this subchapter are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

(3) Where exceptions to incorporated federal regulations are necessary, these exceptions are noted in the rules.

(4) Cross-references within federal regulations adopted and incorporated by reference in these rules refer to the cross-referenced provision as adopted and incorporated by reference in this subchapter with any indicated additions and exceptions.

AUTH: 75-11-505, MCA
IMP: 75-11-505, 75-11-508, 75-11-509, MCA

REASON: The department is proposing to incorporate by reference Subpart K, CFR 280.250 through 280.52 as published July 15, 2015. Incorporating these provisions enables the department to regulate UST systems that were previously deferred from UST requirements such as field constructed tanks and tanks associated with airport hydrant fuel distribution in a manner that is no less stringent than the federal government. The proposed adoption of NEW RULE IV is necessary to meet federal stringency requirements, to maintain state program authorization, and better protect human health and the environment from releases from UST systems that were not regulated prior to these rule amendments. The previous deferral for these UST systems was removed under Subpart K of CFR 280.250 through 280.52 (July 15, 2015). Currently, there are no tanks in Montana that this new rule would apply to. However, in the future, this could change and adoption of NEW RULE IV is necessary in order for the department to have these rules in place if that occurs.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality,

1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., September 21, 2018. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

8. Kirsten Bowers, attorney for the department, has been designated to preside over and conduct the hearings.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

*/s/ Edward Hayes*
EDWARD HAYES
Rule Reviewer

BY: */s/ Tom Livers*
TOM LIVERS
Director

Certified to the Secretary of State, August 14, 2018.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 32.3.1401 definitions, and 32.3.1406 testing of exposed equids | ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENT<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on September 14, 2018, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

32.3.1401 DEFINITIONS (1) and (2) remain the same.

(3) "Exposed equids" are equidae that have been in a herd with reactors or have been in contact with a reactor for seven days or more at a distance of less than 200 yards or as determined by the state veterinarian to be otherwise at risk of being exposed via natural or iatrogenic means.

(4) "Official EIA test report forms" are the USDA, APHIS VS form 10-11 or other similar form approved by the USDA and the state veterinarian. A completed form must contain official identification of the equid and must list the owner's name, the address and county of the animal's home premise, the name and address of the authorized individual collecting the test sample, the laboratory name and address, and the individual's name that conducted the test. The EIA test document ~~shall~~ must list one animal only.

(5) "Official identification" of equine tested for EIA is a description of the equine to include the following: age, sex, breed, color, the animal's name, ~~and~~ distinctive markings (e.g., color patterns, ~~brands, tattoos,~~ scars, or blemishes), and other forms of permanent identification (e.g., brands, tattoos, or microchips). In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos, or scars) the animal must be identified by showing the location of all hair whorls, vortices or cow licks with an "X" on the illustration provided on an official form. Other forms of identification may be used as they are developed and approved by the state veterinarian.

(6) "Official tests" for EIA ~~shall~~ must include the AGID test, the C-ELISA test, and other EIA tests approved by the USDA ~~or~~ and the state veterinarian and conducted by an approved individual at an approved laboratory.

(7) A "reactor" is an equid that is AGID test positive ~~to an official EIA test~~. It ~~shall~~ must be declared to be infected with EIA and ~~shall~~ must be designated as an EIA reactor.

(8) A "suspect" is an equid that is positive on any official test for EIA. It must be declared an EIA suspect and subject to additional testing pending final classification.

AUTH: 81-2-102, 81-2-104, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, MCA

32.3.1406 TESTING OF EXPOSED EQUIDS (1) EIA exposed equids, as defined by ARM 32.3.1401, ~~shall~~ must be placed under a hold order until the animals have been tested negative to EIA at least ~~45~~ 60 days after the last reactor animal has been removed from the premise. Individual exposed equids may be allowed to move under hold order for specific purposes as approved by the state veterinarian if they have a negative EIA test prior to movement. Such movement ~~shall~~ must not be longer than 15 days.

AUTH: 81-2-102, 81-2-104, MCA
IMP: 81-2-102, 81-2-103, 81-2-104, MCA

REASON (ARM 32.3.1401): The department is proposing changes to definitions in order to better reflect current USDA requirements for testing and management of equine infectious anemia (EIA) and to accommodate an expanding body of scientific knowledge about how the disease is transmitted and the performance of the different official tests.

REASON (ARM 32.3.1406): The department is proposing to update the number of days that must elapse following exposure to an equine infectious anemia (EIA) reactor, before an animal can be cleared through a negative test. This update is necessary to be consistent with USDA standards for conducting an EIA epidemiological investigation and current scientific literature that shows animals may take longer than 45 days to seroconvert and therefore show up positive on an official test.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., September 21, 2018.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., September 21, 2018.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be approximately 1,850 persons based on the number of persons in Montana who own horses and reported per capita fees to the Department of Revenue.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ *Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State August 14, 2018.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 36.22.307, 36.22.608, 36.22.1015, and 36.22.1016 pertaining to fracturing of oil and gas wells, and the repeal of ARM 36.22.1244 pertaining to the producer's certificate of compliance | ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On September 17, 2018, at 2:00 p.m., the Department of Natural Resources and Conservation and the Board of Oil and Gas Conservation will hold a public hearing at 2535 St. Johns Avenue, Billings, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board by 5:00 p.m. on September 10, 2018, to advise us of the nature of the accommodation that you need. Please contact Jim Halvorson, Board of Oil and Gas Conservation, 2535 St. Johns Ave., Billings, Montana, 59102; telephone (406) 656-0040; fax (406) 655-6015; TDD/Montana Relay Service (406) 444-1421; or e-mail jhalvorson@mt.gov.

3. The rules as proposed to be amended provide as follows.

36.22.307 ADOPTION OF FORMS (1) The forms ~~hereinafter~~ listed are adopted by reference and made a part of these rules for all purposes, and the same must be used as ~~herein~~ directed in giving notice and in making reports and requests to the board. Copies of printed forms will be supplied by the board on request. ~~Address requests for forms to: Board of Oil and Gas Conservation, 1625 Eleventh Avenue, Helena, Montana, 59620-1601 or 2535 St. Johns Avenue, Billings, Montana, 59102.~~

(a) through (j) remain the same.

~~(k) Form No. 13 Producers Certificate of Compliance and Authorization to Transport Oil and Gas from Lease~~

(l) through (s) remain the same but are renumbered (k) through (r).

AUTH: 82-11-111, MCA
IMP: 2-4-201, 82-11-111, MCA

REASONABLE NECESSITY: The department proposes to amend this rule to remove Form No. 13 because it serves no current regulatory purpose. The

department further proposes to incorporate by reference updated versions of Form No. 9 and Form No. 10, proposed to be dated August 2018. The proposed changes to Form No. 9 are: change of filing address, request for printed name of submitter, addition of lines and column boundaries to the form, clarification that the API well number may be used for identification of the gas source in addition to a lease or meter station, and requesting that the number of wells associated with the lease or station be reported rather than the well type. The proposed changes to Form No. 10 are: change of filing address, request for printed name of submitter, simplification of the production section of the form and the addition of Helium, Carbon Dioxide, and Nitrogen as potential plant output. Page 2 of Form No. 10 is changed to clarify that API well number may be used for identification of the gas source in addition to a lease or meter station, and requesting that the number of wells associated with the lease or station be reported rather than the well type. The proposed updated versions of these forms will be available here: http://bogc.dnrc.mt.gov/Forms/WebForms/.

36.22.608 WELL STIMULATION ACTIVITIES COVERED BY DRILLING PERMIT (1) and (2) remain the same.

(3) For the purpose of this section, an adequate description of the proposed well stimulation includes:

(a) remains the same.

(b) ~~the trade name or generic name of the principle components or chemicals;~~ disclosure of fracturing fluids in accordance with 82-10-603, MCA;

(c) through (e) remain the same.

~~(4) In lieu of a well specific design the owner, operator, or service company may provide:~~

~~(i) a copy of a final design of well treatment actually used for similar wells and which reflects the likely design for the well to be permitted; or~~

~~(ii) a prefiled generic design submitted for specific geologic formations, geographic areas, or well types likely to be used in a particular well.~~

AUTH: 82-11-111, MCA
IMP: 82-11-111, 82-11-122, 82-11-134, MCA

REASONABLE NECESSITY: The board proposes to amend this rule to ensure consistency with statutory changes in 82-10-600, MCA et seq., which became effective October 1, 2017.

36.22.1015 DISCLOSURE OF WELL STIMULATION FLUIDS (1) remains the same.

(2) For hydraulic fracturing treatments the description of the amount and type of material used must include~~:~~ the disclosure of fracturing fluids in accordance with 82-10-603, MCA, with the actual rate or concentration of each ingredient or additive used for treatment.

~~(a) a description of the stimulation fluid identified by additive type (e.g. acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer,~~

~~gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant); and~~

~~(b) the chemical ingredient name and the Chemical Abstracts Service (CAS) Registry number, as published by the Chemical Abstracts Service, a division of the American Chemical Society (www.cas.org), for each ingredient of the additive used. The rate or concentration for each additive shall be provided in appropriate measurement units (pounds per gallon, gallons per thousand gallons, percent by weight or percent by volume, or parts per million).~~

(3) and (4) remain the same.

AUTH: 82-11-111, MCA
IMP: 82-11-111, MCA

REASONABLE NECESSITY: The board proposes to amend this rule to ensure consistency with statutory changes in 82-10-600, MCA et seq., which became effective October 1, 2017.

36.22.1016 PROPRIETARY CHEMICALS AND TRADE SECRETS (1) As provided in 30-14-402, MCA, where the formula, pattern, compilation, program, device, method, technique, process, or composition of a chemical product is unique to the owner or operator or service contractor and would, if disclosed, reveal methods or processes entitled to protection as trade secrets, ~~such a chemical need not be disclosed to the board or staff. The~~ the owner, operator, or service contractor may ~~identify the trade secret chemical or product by trade name, inventory name, chemical family name, or other unique name and the quantity of such constituent(s) used.~~ request that the administrator withhold the information in accordance with 82-10-604, MCA.

(2) If necessary to respond to a spill or release of a trade secret product the ~~owner, operator, or service contractor must provide to the board or staff, upon request, a list of the chemical constituents contained in a trade secret product. The~~ administrator may request information be provided orally or be provided directly to a laboratory or other third party performing analysis for the board. ~~Board members, board staff, and any~~ Any third parties receiving trade secret information on behalf of the board may be required to execute a nondisclosure agreement.

(3) and (4) remain the same.

AUTH: 82-11-111, MCA
IMP: 82-11-111, MCA

REASONABLE NECESSITY: The board proposes to amend this rule to ensure consistency with statutory changes in 82-10-600 et seq., which became effective October 1, 2017.

4. The department proposes to repeal the following rule:

36.22.1244 PRODUCER'S CERTIFICATE OF COMPLIANCE

AUTH: 82-11-111, MCA
IMP: 82-11-123, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule because Form No. 13, on which this rule is based, serves no current regulatory purpose and ARM 36.22.307 is proposed to be amended to remove Form No. 13.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jim Halvorson, Board of Oil and Gas Conservation, 2535 St. Johns Ave., Billings, Montana, 59102; telephone (406) 656-0040; fax (406) 655-6015; or e-mail mtogpub@mt.gov, and must be received no later than 5:00 p.m., September 24, 2018.

6. Robert Stutz, Agency Legal Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Robert Stutz
ROBERT STUTZ
Rule Reviewer

/s/ Ronald S. Efta
RONALD S. EFTA
Chair
Board of Oil and Gas Conservation

Certified to the Secretary of State August 14, 2018.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 38.2.3301 pertaining to discovery procedures | ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On September 18, 2018, at 1:30 p.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on September 11, 2018, to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail rhonda.simmons@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

38.2.3301 DISCOVERY (1) ~~Techniques of prehearing discovery permitted in state civil actions may be employed in commission contested cases, and for this purpose the commission adopts rules 26, 28 through 37 (excepting rule 37(b) (1) and 37(b) (2) (d) of the Montana rules of civil procedure in effect on the date of the adoption of this rule, and any subsequent amendments thereto. In applying the rules of civil procedure to commission proceedings, all references to "court" shall be considered to refer to the commission; references to the subpoena power shall be considered references to ARM 38.2.3302 through 38.2.3305; references to "trial" shall be considered references to hearing; references to "plaintiff" shall be considered references to a party; and references to "clerk of court" shall be considered references to the staff member designated to keep the official record in commission contested cases.~~ The commission will typically issue a procedural order to govern discovery in each docket. Unless otherwise specified, the commission adopts Rule 26(b) of the Montana Rules of Civil Procedure (excepting Rule 26(b)(4)(C)) which establishes the scope and limits of discovery and Rule 37 which governs discovery abuses and compelling discovery responses, except the commission may not award monetary damages as a discovery sanction. All parties, the commission, and individual commissioners may issue discovery in commission proceedings. Parties may issue discovery to the commission or commissioners only upon motion, and subsequent authorization by the commission.

(2) ~~Nothing in (1) of this rule shall be construed to limit the free use of data requests among the parties. The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the commission.~~ Data requests are the primary method of discovery in commission proceedings. Additional discovery methods permitted by Montana Rule of Civil Procedure 26(a) may also be utilized in commission proceedings, but only as requested by a party or the commission, and as approved by the commission. The following format for data requests and responses should be used:

(a) assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the commission may direct PSC-001 through 008 to NorthWestern, PSC-009 through 016 to the MCC, and PSC-017 through 019 again to NorthWestern);

(b) at the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony; and

(c) for multi-part requests, use lower case letters (a)-(e) to denote up to five sub-parts.

(3) The following is an example of an acceptable data request or data response:

PSC-006 RE: Purchased Gas Contracts
Witness: Doe, JBD-4:13-15
Request or Response:

a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?

b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

AUTH: 2-4-612, 69-1-110(3), 69-2-101, 69-2-102, 69-3-103, 69-3-106, 69-3-203(2), 69-3-321, 69-12-201(2), MCA
IMP: 69-1-110(3), 69-2-101, MCA

REASON: Amendment of ARM 38.2.3301 is necessary to clarify and codify long-standing discovery practice before the department. Due to an ambiguity in ARM 38.2.3301, a Montana district court has found that the department lacks the authority to engage in discovery in transportation contested case proceedings. These rulings appear to be based on the language in ARM 38.2.3301 which compares the department and contested case proceedings to courts and trials, where the court's role to investigate issues before it is much more narrowly constrained, and where the court is not allowed to issue discovery. As the department is statutorily required to act in the dual capacity of both investigator and adjudicator in contested case proceedings, it is appropriate to eliminate this ambiguity by removing all references to court and trials.

This rule indicates to parties that specific discovery procedures for each proceeding before the department will typically be contained within the procedural order for that specific docket. This rule retains the incorporation of Mont. R. Civ. Pro. 26(b), as this provides helpful guidelines and case law to determine the scope of discovery before the department. However, the amendment does not incorporate Rule 26(b)(4)(C), as this sub-section has various requirements for expert witness compensation that would not be practical or reasonable given the department's substantial pre-filed expert testimony in various department proceedings.

This rule retains the incorporation of Mont. R. Civ. Pro. 37, as this provides helpful guidelines and case law to govern discovery abuses before the department. However, it does not allow the department to require monetary damages for discovery abuses. This rule codifies department practice indicating that parties are only permitted to issue discovery upon the department, commissioners, and staff when requested by parties and authorized by the department.

This rule codifies department procedural order practice indicating that data requests are the primary method of discovery in commission proceedings. It also retains the incorporation of Mont. R. Civ. Pro. 26(a), as this allows additional discovery methods in addition to discovery requests. However, it conditions these additional mechanisms upon department approval, as these additional mechanisms are rarely utilized before the department, and their usage should be permitted only when necessary or as reasonable.

This rule codifies the typical department format for data requests, as developed over time and as indicated in procedural orders for each contested case proceeding. Finally, this rule notes additional statutory references to reinforce the department's investigatory authority in various proceedings and with various types of regulated entities that practice before the department.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Simmons, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail rhonda.simmons@mt.gov, and must be received no later than 5:00 p.m., September 21, 2018.

5. The commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

6. The Department of Public Service Regulation maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 2 above or

may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the Department of Public Service Regulation has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State August 14, 2018.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rule I pertaining to commencement of guaranteed annual benefit adjustment | ) ) ) ) | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On July 6, 2018, the Public Employees' Retirement Board published MAR Notice No. 2-43-576 pertaining to the proposed adoption of the above-stated rule at page 1209 of the 2018 Montana Administrative Register, Issue Number 13.

2. The Public Employees' Retirement Board has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (2.43.2606) COMMENCEMENT OF GUARANTEED ANNUAL BENEFIT ADJUSTMENT (1) If otherwise eligible, a retired member of any retirement system will receive their first guaranteed annual benefit adjustment (GABA) in their January benefit if they have been receiving a monthly benefit in every month for at least 12 months. Except as provided in ~~(2)~~ (3), commencement of the 12-month period starts the month in which the first benefit payment is made, not the month for which any part of the payment is due.

(2) HPORS retirees hired on or after July 1, 2013 will receive their first GABA in their January benefit if they have been receiving a monthly benefit in every month for at least 36 months. Except as provided in (3), commencement of the 36-month period starts the month in which the first benefit payment is made, not the month for which any part of the payment is due.

~~(2)~~ (3) In the event a member timely applies to begin retirement in January of any year, but through no fault of the member the January payment is not paid until a later month, the member will be eligible for GABA the January immediately following commencement of payment of the benefit. HPORS retirees hired on or after July 1, 2013, will be eligible the third January following commencement of payment of the benefit.

(a) and (b) remain as proposed.

AUTH: 19-2-403, 19-3-1605, 19-5-901, 19-5-902, 19-6-710, 19-6-711, 19-6-712, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, 19-13-1011, MCA

IMP: 19-2-908, 19-3-1605, 19-5-901, 19-5-902, 19-6-710, 19-6-711, 19-6-712, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-9-1207, 19-13-1010, 19-13-1011, MCA

3. The Public Employees' Retirement Board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: A comment was received regarding whether the clause “If otherwise eligible” in subsection (1) was intended to address HPORS retirees who were hired on or after July 1, 2013 and thus unable to receive a GABA until they receive their retirement benefit for 36 months.

RESPONSE 1: The Public Employees’ Retirement Board appreciates the comment and believes it best to specifically address the commencement of the GABA for HPORS retirees who were hired on or after July 1, 2013, as those individuals must wait 36 rather than 12 months prior to being eligible to receive the GABA. The final rule has been amended accordingly.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ Marty Tuttle
Marty Tuttle
President
Public Employees’ Retirement Board

Certified to the Secretary of State August 14, 2018.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

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| In the matter of the adoption of New Rules I through IV pertaining to the Analytical Laboratory fees | ) ) ) | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On July 6, 2018, the Department of Agriculture published MAR Notice No. 4-18-250 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1214 of the 2018 Montana Administrative Register, Issue Number 13.

2. The department has adopted the above-stated rules as proposed: New Rules I (4.22.101), II (4.22.102), III (4.22.103), and IV (4.22.104).

3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State August 14, 2018.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

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| In the matter of the adoption of an emergency rule closing the Beartooth Wildlife Management Area in Lewis and Clark County | ) ) ) ) | NOTICE OF ADOPTION OF AN EMERGENCY RULE |

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Beartooth Wildlife Management Area:

(a) A wildfire is burning in the Beartooth Wildlife Management Area (WMA).

(b) Persons recreating on the Beartooth Wildlife Management Area would be subjected to erratic and unpredictable fire conditions posing a danger of:

(i) becoming surrounded and trapped by the fire;

(ii) becoming a potential burden to rescue and fire crews; or

(iii) death.

(c) Heavy equipment, including aircraft, stationed and operating within the WMA pose a threat to persons recreating and fire crews stationed within the WMA.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 16 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 7, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective August 13, 2018, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I BEARTOOTH WILDLIFE MANAGEMENT AREA EMERGENCY CLOSURE (1) The Beartooth Wildlife Management Area is located in Lewis and Clark County.

(2) The Beartooth Wildlife Management Area is closed to all public occupation, hunting, and recreation.

(3) This rule will expire as soon as the department determines the Beartooth Wildlife Management Area is again safe for occupation and recreation. This will depend on the extent and duration of the fire in the area. Signs restricting use of the Beartooth Wildlife Management Area will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is as set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail jesssnyder@mt.gov. Any comments must be received no later than September 21, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Paul Sihler
Paul Sihler
Chief of Staff
Department of Fish, Wildlife and Parks

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State August 13, 2018.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

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| In the matter of the adoption of NEW RULE I pertaining to facilities exempt from geographic restrictions applicable to high-risk sexual offenders | ) ) ) ) ) | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On April 13, 2018, the Department of Corrections published MAR Notice No. 20-4-64 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 684 of the 2018 Montana Administrative Register, Issue 7.

2. The department has adopted New Rule I (20.4.101) exactly as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

The department received 12 written comments from approximately 20 individuals during the public comment period specified in MAR Notice No. 20-4-64 published in the Montana Administrative Register (MAR) on April 13, 2018. One comment was received after the comment period closed and could not be considered by the department. All comments came from Glendive area residents and contained certain common themes which are summarized in Comment #1. A single response to the common themes is contained in the department's Response #1. Some comments included additional unique perspectives or concerns. Individual responses are provided by the department to those comments.

COMMENT #1: All commenters opposed inclusion of the department's facility at 700 Little Street in Glendive, MT, among the facilities or programs listed in (1) of the proposed rule. Commenters stated that the 700 Little Street address is situated in a residential neighborhood where families with young children live; that children play near and walk past the facility going to and from virtually anywhere in the vicinity; that the facility is not secure and was not built to house the category of sex offenders referred to in 45-5-513, MCA; and that placement of such sex offenders at that location would unacceptably compromise public safety.

RESPONSE #1: The department acknowledges that the commenters' concerns are valid in every respect. It is necessary for the department to provide some additional background to put the proposed rule in a clearer context. The 2015 Montana Legislature passed 45-5-513, MCA, establishing geographic restrictions on where certain high-risk sexual offenders can live and work and on their proximity to and behavior toward victims. The law became effective on October 1, 2015. By the terms of 45-5-513, MCA, a high-risk sexual offender placed by the department in

one of its facilities or a contracted facility that existed as of October 1, 2015, is not in violation of the statute for being there and the department is not restricted *under 45-5-513, MCA,* from placing a high-risk sexual offender there.

In addition, under 45-5-513, MCA, the department may place a high-risk sexual offender in a facility established or contracted by it after October 1, 2015. The offender would not be in violation of the statute in that circumstance, provided that prior to establishing the facility the department held at least one public hearing in the community where it was to be located.

The department has not established or contracted for any new facility since October 1, 2015. The list of facility addresses in the proposed rule includes every department or contracted facility in the state. All state prisons, regional prisons (including the regional prison at 440 Colorado Blvd. in Glendive), and the private prison in Shelby are included in the list of facility addresses in the proposed rule. High-risk sexual offenders are and will continue to be sentenced to or placed at those facilities.

All seven of the contracted prerelease centers are listed in the proposed rule although only three of them currently accept sexual offenders.

A secure youth correctional facility is listed in the proposed rule. An adjudicated delinquent youth whose conduct meets the criteria in 45-5-513, MCA, could be committed by the court to the youth correctional facility or committed to the department and placed there.

All department or contracted *treatment* facilities are included in the list although only four of them are currently considered by the department to be secure facilities (WATCh West at Warm Springs, NEXUS at Lewistown, Elkhorn at Boulder, and Passages ADT at Billings).

The remaining facilities which are not prisons, youth correctional facilities, prerelease centers, or secure treatment facilities are listed in the rule because they are department or contract facilities with specific purposes (e.g., assessment and sanctioning) and, like other facilities listed, could in a dynamic, evolving corrections environment, be retrofitted and repurposed.

The department is required by law to propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole and skill development of persons placed in correctional facilities or programs. Section 53-1-203(1)(e), MCA.

The facility housing the WATCh East chemical dependency treatment program for offenders at 700 Little Street in Glendive, is one of only three non-prison facilities in the state that the department owns. The others are contracted facilities. When the siting of a chemical dependency treatment program for offenders at the 700 Little Street location was under consideration by the department, there was substantial community opposition. The proposed chemical dependency treatment facility for offenders was formed under the Community Corrections Act (Act), Title 53, ch. 30, part 3, MCA. Under the Act, offenders are screened by a board of local persons. The board has statutory authority to accept, reject, or reject after acceptance, the placement of any offender in the facility or program. 53-30-313(3), MCA. Administrative rules were adopted by the department that are specifically and exclusively applicable to the 700 Little Street, Glendive, MT facility. See, ARM 20.7.801, 20.7.804, 20.7.807, 20.7.810, 20.7.813, and 20.7.816. Admissions

criteria are set in ARM 20.7.807. Persons convicted of a sexual or violent offense as defined in 46-23-502, MCA, are ineligible for placement in the WATCh East chemical dependency treatment program for offenders under ARM 20.7.801. The department may not expand or modify the purpose of the chemical dependency treatment program at 700 Little Street in Glendive except as provided in ARM 20.7.816.

When enacted in 2015, (4) and (5) of 45-5-513, MCA, required that the department adopt administrative rules specifying the "types" of facilities to which those subsections of the statute pertain. The legislative auditor brought to the department's attention that the required rulemaking had not been done. That circumstance prompted publication of the subject administrative rule proposal notice at this time. Historically, the department has not identified "types" of facilities that it utilizes for placement of offenders. All facilities are utilized according to the programming services provided at each and according to assessments of offenders' risks and needs. Facilities are not consistently categorized by the department as "secure" and "non-secure." Therefore, the department listed all facilities in the rule because all were in operation as of October 1, 2015. Any proposed new facility constructed, designated, or commenced after that date and subject to the community hearing requirement in 45-5-513(5), MCA will be readily identifiable in the future by its absence from the list in the administrative rule.

Because the department owns the facility at 700 Little Street in Glendive, it cannot responsibly represent there will never be a modification of the programming/use of the facility. Any modification would be done, if at all, after community hearing(s) and upon determination of public support, all in accordance with procedures established by applicable law and administrative rules. For that reason, the department declines to remove the 700 Little Street, Glendive, MT address, from the list of facilities in operation as of October 1, 2015. The legislature grandfathered those facilities and exempted them from the procedural requirements contained in 45-5-513(5), MCA, applicable to facilities that become operational after October 1, 2015.

Many safeguards are in place in the law and within the department to assure that decisions regarding placements of offenders committed to the department by the sentencing courts are well reasoned, taking into consideration the offender's rehabilitation needs and the safety and security of the public. The department's duty to protect the public is taken very seriously. That being said, the majority of all persons sentenced to prison for felony offenses are eventually released back into the community under the supervision of the department's probation and parole division until they fully discharge their sentences. The department also takes very seriously its duty to rehabilitate offenders and prepare them for re-entry to society. It does so by placing offenders where the services that they need are available.

COMMENT #2: Several commenters stated that placement of high-risk sexual offenders at 700 Little Street in Glendive would adversely impact property values of nearby homes. Two commenters stated that if the department ever decided to confine or treat high-risk sexual offenders at the subject facility, the decision will adversely affect property values and constitute department "action with taking or damaging implications" and, therefore, an impact assessment should be conducted in accordance with 2-10-105, MCA.

RESPONSE #2: The department's proposed rule does not state that high-risk sexual offenders will be placed at 700 Little Street, Glendive. There are currently no plans to expand or modify the purpose of the program (defined in ARM 20.7.801(7)) that is in operation at the location. Any future expansion or modification of the program in operation will be governed by all applicable laws and administrative rules. ARM 20.7.816.

The property value comments make reference to Title 2, Chapter 10, Part 1 of the Montana Code Annotated which is the "Private Property Assessment Act." The phrase "action with taking or damaging implications" referred to in some comments is defined in 2-10-103(1), MCA, as "a proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution. [The phrase] does not include: (a) proposed eminent domain proceedings."[1] (Emphasis added).

The department's proposed rule pertains to placement of offenders in department and contracted facilities. The proposed rule is unrelated to land or water management or other environmental matter and thus the impact assessment required under 2-10-105, MCA is inapplicable. Mont. Code Ann. 2-10-102 states, in relevant part, that: "It is not the purpose of this part to expand . . . the private property protections provided in the federal and state constitutions."

COMMENT #3: One commenter referred to public meetings held by the department in Glendive when the facility at 700 Little Street was being considered as a site for the WATCh East chemical dependency treatment program for offenders under department jurisdiction. The commenter stated that assurances were made by the department that sexual offenders would not be placed there. The commenter also objected to the department only allowing a public forum for comments but not empowering the [community corrections] board to deny use of the facility to house sexual offenders.

RESPONSE #3: The commenter is correct that assurances were made to the community when the department was proposing to establish a chemical dependency treatment program at the 700 Little Street location, that no sexual or violent offender as defined in 46-23-502, MCA, would be placed there. That assurance was incorporated into the department's administrative rules that are referred to in Response #1 and which are specifically and exclusively applicable to the facility at 700 Little Street, Glendive, MT. Those administrative rules remain in full force and effect.

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[1] By contrast, the term "taking or damaging" means depriving a property owner of private property in a manner requiring compensation under the 5th and 15th amendments to the constitution of the United States or Article II, section 29, of the Montana constitution, [i.e., under the eminent domain provision of the Montana constitution]. Section 2-10-103(4), MCA.

COMMENT #4: One commenter stated that 45-5-513(4), MCA, does not require that any or all programs or facilities be exempted from the geographic restrictions applicable to high-risk sexual offenders.

RESPONSE #4: Facilities in operation on or before October 1, 2015 were grandfathered, i.e., exempted by the terms of 45-5-513, MCA itself. The legislature stated in 45-5-513(4), MCA that "[t]his section [45-5-513. Geographic restrictions applicable to high-risk sexual offenders] does not apply to offenders placed in a facility in operation by the department or a contractor of the department before October 1, 2015." The department's proposed rule does nothing more than identify which department and contracted facilities were in operation before October 1, 2015, and state that no new facilities have been established since that date.

Section 45-5-513(5), MCA, states that "[as] part of the process of granting an exemption to a facility contracted or designated after October 1, 2015, the department of corrections . . . shall hold at least one public hearing in the community where the facility is to be located."

As previously stated, the department owns the facility at 700 Little Street, Glendive. The department is empowered by the legislature under 53-1-203(1)(a)(v), MCA, to adopt rules necessary for the admission, custody, transfer, and release of persons in department programs. Exercise of that power is subject to the provisions of the Community Corrections Act under which the facility at 700 Little Street in Glendive is operated.

COMMENT #5: One commenter served as the law enforcement officer member of the Community Corrections Board when a chemical dependency treatment program was proposed to be operated in the department's facility at 700 Little Street, Glendive, MT. In addition, the commenter served for a time on the applicant admission screening committee. The commenter stated he knew of no one in the community who was aware of the 2015 legislation (codified as 45-5-513, MCA) before now and he knew of no one in the community who was aware of the hearing held in Helena on the department's proposed rule concerning 45-5-513, MCA, prior to the rule hearing taking place. The commenter proposed that the 700 Little Street address in Glendive, MT be removed from the proposed rule because there are ample other [facility] options available to the DOC to treat the high-risk sex offenders.

RESPONSE #5: The legislation (Ch. 412, L. 2015) that passed in 2015 and was codified as 45-5-513, MCA, was not a department bill. The department neither supported nor opposed the bill. Bills introduced during each legislative session may be reviewed and tracked on the Legislative Branch website (LAWS). The content of bills as introduced and as amended throughout the legislative process and the dates, times, and places of the legislative hearings on bills, are always available to the public in real time on that website. Audio and video recordings of hearings are available online.

The procedures that must be followed by a state agency when it proposes to adopt, amend or repeal administrative rules, are very detailed and are set out in the Montana Administrative Procedure Act (MAPA), Title 2, chapter 4, part 3 of the

Montana Code Annotated. The department complied with the MAPA rulemaking requirements. The department's hearing officer for the proposed rule at issue was contacted by a Glendive city official well in advance of the rule hearing in Helena. The official was aware of the proposed rule and called the department's hearing officer about it. The department's hearing officer corrected the caller's misconception that the rule hearing would be in Glendive. The caller was encouraged to attend the hearing in Helena and to encourage other concerned citizens to do so as well. The purpose of an administrative rule hearing is to give proponents and opponents of the rule an opportunity to present their oral comments on the record and/or submit their written comments to the hearing officer during the hearing. A rule hearing is not conducted in a debate format or in a question and answer format and so submission of written comments is an equally effective means of making the commenter's position/opinion known to the department. No members of the public personally attended the subject rule hearing in Helena. All comments on the rule proposal came in the form of written submissions by email from Glendive area residents. In contrast to an administrative rule hearing, any hearings under 45-5-513(5), MCA, concerning proposed expansion or modification of the purpose of the chemical dependency treatment program in operation at 700 Little Street in Glendive will be conducted in Glendive.

Pursuant to 2-4-302(2)(a)(iii), MCA, the department maintains an "interested persons list" consisting of the names and contact information for persons who wish to receive notice of the department's rulemaking notices. Those who submitted comments to the rule proposal notice at issue and any other concerned citizens are encouraged to send to the department a request to be added to its interested persons list to ensure receipt of timely notice of the department's rulemaking activities. Please refer to paragraph 6 of the rule proposal notice, MAR Notice No. 20-4-64, for further information about the interested persons list.

With respect to the commenter's proposal that the 700 Little Street address in Glendive be removed from the rule because there are ample other options available to the department for the treatment of high-risk sex offenders, please refer to the department's Response #1.

/s/ Colleen E. Ambrose
Attorney
Rule Reviewer

/s/ Reginald D. Michael
Director
Department of Corrections

Certified to the Secretary of State August 14, 2018.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 20.7.901, 20.7.904, 20.7.907, 20.7.910, 20.7.913, and 20.7.919, and the repeal of ARM 20.7.916 pertaining to residential methamphetamine treatment programs | ) ) ) ) ) ) ) | NOTICE OF AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On June 8, 2018, the Department of Corrections published MAR Notice No. 20-7-68 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1092 of the 2018 Montana Administrative Register, Issue Number 11.

2. The department has amended ARM 20.7.901, 20.7.904, 20.7.907, 20.7.910, 20.7.913, and 20.7.919 as proposed.

3. The department has repealed ARM 20.7.916 as proposed.

4. No comments or testimony were received.

/s/ Colleen E. Ambrose
Attorney
Rule Reviewer

/s/ Reginald D. Michael
Director
Department of Corrections

Certified to the Secretary of State August 14, 2018.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.171.410 outfitter assistants and 24.171.2301 unprofessional conduct and misconduct | ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On March 16, 2018, the Board of Outfitters (board) published MAR Notice No. 24-171-38 regarding the public hearing on the proposed amendment of the above-stated rules, at page 530 of the 2018 Montana Administrative Register, Issue No. 5.

2. On April 12, 2018, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the April 13, 2018, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Many commenters strongly supported the rule amendments, stating that the rules are consistent with board statutes. Several commenters further noted that outfitters are responsible for the conduct of outfitter's assistants.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Numerous commenters supported the amendments in general, but asserted that economic emergencies and overbooking situations do not fall within the legislative intent or the board's definition of emergency. Several commenters also questioned who would decide the "case by case" use of the emergency, and requested the board ensure outfitter's assistant laws are not abused.

RESPONSE 2: The board recognizes that implementing the amendments will require them to develop policies to guide staff in reviewing each case of an outfitter hiring or employing an outfitter's assistant and define circumstances which require staff to file complaints for review by the screening panel. At this time, the board will not define any specific circumstance as not meeting the definition of emergency in the board's statutes and rules. Each case will be reviewed according to individual factual circumstances.

COMMENT 3: Several commenters opposed the use of outfitter's assistants, stating they may be used to circumvent licensing requirements for guides, and their use does not provide for the welfare of the public. One commenter was concerned that

outfitter's assistants may not have insurance or CPR or first aid certification, and asserted that use of outfitter's assistants on public lands could create legal problems for land-based agencies such as the Montana Department of Fish, Wildlife and Parks.

RESPONSE 3: By amending the rules as proposed, the board is implementing statutory direction from the Montana Legislature. The board does not have authority to repeal outfitter's assistant laws enacted by the legislature. Moreover, the question of liability for land-based agencies is beyond the authority of the board to determine. Approximately 50 percent of outfitter's assistants registered by outfitters have also applied for a professional license requiring current first aid certification. Outfitter's assistants are covered by an outfitter's insurance policy.

COMMENT 4: One commenter opposed the first aid requirement rule as not providing for the health and welfare of the public being served.

RESPONSE 4: The board did not propose any amendments to ARM 24.171.412 in this proposal notice; therefore the comment is beyond the scope of this rulemaking.

4. The board has amended ARM 24.171.410 and 24.171.2301 exactly as proposed.

BOARD OF OUTFITTERS
JOHN WAY, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 14, 2018.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.57.101, 37.57.102, 37.57.105, 37.57.106, 37.57.109, 37.57.111, 37.57.112, and 37.57.117, and the repeal of ARM 37.57.110 pertaining to financial assistance for children and youth with special health care needs | ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On July 6, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-855 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1246 of the 2018 Montana Administrative Register, Issue Number 13.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

4. The department intends to apply these rule amendments and repeal retroactively to August 1, 2018. A retroactive application of the proposed rule amendments and repeal does not result in a negative impact to any affected party.

/s/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

/s/ Marie Matthews, for Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State August 14, 2018.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.34.3005, 37.85.104, 37.85.105, 37.85.106, 37.86.705, 37.86.805, 37.86.1006, 37.86.1101, 37.86.1105, 37.86.1406, 37.86.1807, 37.86.2005, 37.86.2605, 37.86.2803, 37.86.2806, 37.86.2905, 37.86.2912, 37.86.3007, 37.86.3109, 37.86.3205, and 37.86.3607 pertaining to updating the effective dates of non-Medicaid and Medicaid fee schedules | ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) | NOTICE OF DECISION ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On August 10, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-859 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1550 of the 2018 Montana Administrative Register, Issue Number 15.

2. A public hearing on the notice of proposed amendment of the above-stated rules was scheduled to be held on August 30, 2018. That hearing is hereby vacated.

3. At this time, the department is withdrawing MAR Notice No. 37-859 from consideration. Since the filing of this notice the department has been served a temporary restraining order requiring the department raise rates effective August 2, 2018. The department is interested in two outcomes: 1) ensuring that providers will not have to return the temporary rate increase when the injunction expires; and 2) raising provider rates as early as possible in state fiscal year 2019. Therefore, the department is withdrawing MAR Notice No. 37-859 from consideration. The department will file a replacement notice of proposed rulemaking on August 28, 2018 that will propose to raise rates effective July 1, 2018 by 2.99%.

/s/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

/s/ Marie Matthews
Marie Matthews for Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State August 14, 2018.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.40.307 pertaining to nursing facility reimbursement rates for state fiscal year 2019 | ) ) ) ) | NOTICE OF DECISION ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On August 10, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-861 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1577 of the 2018 Montana Administrative Register, Issue Number 15.

2. A public hearing on the notice of proposed amendment of the above-stated rules was scheduled to be held on August 31, 2018. That hearing is hereby vacated.

3. At this time, the department is withdrawing MAR Notice No. 37-861 from consideration. Since the filing of this notice the department has been served a temporary restraining order requiring the department raise rates effective August 2, 2018. The department is interested in two outcomes: 1) ensuring that providers will not have to return the temporary rate increase when the injunction expires; and 2) raising provider rates as early as possible in state fiscal year 2019. Therefore, the department is withdrawing MAR Notice No. 37-861 from consideration. The department will file a replacement notice of proposed rulemaking on August 28, 2018 that will propose to raise rates effective July 1, 2018 by 2.99%.

/s/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

/s/ Marie Matthews
Marie Matthews for Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State August 14, 2018.

## NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

### Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

**Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

**Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

**Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

**Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

**Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

**Water Policy Interim Committee (where the primary concern is the quality or quantity of water):**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

# HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

**Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

**Use of the Administrative Rules of Montana (ARM):**

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

# RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2018. This table includes notices in which those rules adopted during the period January 1, 2018, through July 6, 2018, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2018, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2018 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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(Board of Medical Examiners)

24-156-84 Fee Schedule - Examination - Renewals - Purpose and Authority - Definitions - Fees - Ankle Surgery Certification - Surgery Certification - Accreditation, Approval, and Standards - Physician Assistant Fees - Obligation to Report to Board - Medical Assistant–Delegation and Supervision - Practice Requirements for Physicians Using Telemedicine - Medical Assistant - Effect of Telemedicine License, p. 936

(Board of Nursing)

24-159-85 Definitions - Enhanced Nurse Licensure Compact Rules - Issuance of a License by a Compact State - Limitations on Multistate Licensure Privilege–Discipline - Information System, p. 624, 947

(Board of Nursing Home Administrators)

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(Board of Outfitters)

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(Board of Pharmacy)

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(Board of Physical Therapy Examiners)

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(Board of Psychologists)

24-189-38 Renewal Dates and Requirements - Psychologist Application Procedures - Minimum Standards - Work Samples-Examinations - Licensure as a Psychologist by Experience (Senior) - Nonroutine Psychologist Applications - Nonroutine Behavior Analyst or Assistant Behavior Analyst Applications, p. 2394, 844

24-189-39 Application Procedures for Behavior Analysts and Assistant Behavior Analysts, p. 540, 978

(Board of Public Accountants)

24-201-51 Fee Schedule - Use of CPA/LPA Designation - Applicant for Initial License - Certified Public Accountant Examination - Out-of-State Licensees Seeking a Montana License - Foreign Licensees Seeking a Montana License - Application Review - Peer Review Enrollment - Alternatives and Exemptions - Approved Peer Review Sponsoring Organizations, Programs, and Peer Review Standards - Standards for CPE Reporting - Reporting Requirements - Extension or Hardship Exception, p. 1359

(Board of Real Estate Appraisers)

24-207-41 Qualifying and Continuing Education Requirements, p. 56, 722

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24-210-44 Definitions - Fee Schedule - Trust Account Requirements - General License Administration Requirements - Inactive Licenses - Inactive to Active License Status - Renewals - Unprofessional Conduct - Disciplinary Guidelines–Public Notice - Property Management Trust

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(Board of Sanitarians)
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(Board of Speech-Language Pathologists and Audiologists)
24-222-28 Renewal Dates and Requirements - Definitions - Supervisor Responsibility - Functions of Speech-Language Pathology Aides or Assistants - Delivery of Telepractice Services - Continuing Education–Speech Language Pathologists and Audiologists - Screening Panel - License Renewal - Schedule of Supervision–Contents, p. 1368

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24-225-40 Definitions - Nonroutine Applications - Temporary Permits - Veterinarian Licenses - Veterinarian Examinations - Licensure of Out-of-State Veterinarian - Continuing Education - Continuing Education Instructors - Record-Keeping Standards - Management of Infectious Wastes - Inspection and Sanitation - Occasional Case Exemption, p. 774, 1281

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## EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in July 2018 appear. Potential vacancies from September 1, 2018 through November 30, 2018, are also listed.

**IMPORTANT**

Membership on boards and commissions changes constantly. The following lists are current as of August 1, 2018.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

## EXECUTIVE BRANCH APPOINTEES FOR JULY 2018

| Appointee | Appointed By | Succeeds | Appointment/End Date |
|---|---|---|---|
| **9-1-1 Advisory Council** | | | |
| Mr. Timothy Bottenfield | Governor | Baldwin | 7/20/2018 |
| Helena | | | 9/1/2019 |
| Qualifications (if required): | Dept. of Administration Director or Designee, Presiding Officer | | |
| **Board of Funeral Service** | | | |
| Mr. Steve A. Schnider | Governor | Reappointed | 7/1/2018 |
| Great Falls | | | 7/1/2023 |
| Qualifications (if required): | Licensed Mortician | | |
| **Board of Horse Racing** | | | |
| Mr. John Hayes | Governor | Reappointed | 7/20/2018 |
| Great Falls | | | 1/1/2021 |
| Qualifications (if required): | District 3 | | |
| Mr. Gary William Koepplin | Governor | Austin | 7/20/2018 |
| Florence | | | 1/1/2019 |
| Qualifications (if required): | District 5 | | |
| Senator Dale Mahlum | Governor | Reappointed | 7/20/2018 |
| Missoula | | | 1/1/2019 |
| Qualifications (if required): | Horse racing Industry | | |

## EXECUTIVE BRANCH APPOINTEES FOR JULY 2018

| Appointee | Appointed By | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Board of Horse Racing Cont.** | | | |
| Mr. Shawn Real Bird | Governor | Reappointed | 7/20/2018 |
| Crow Agency | | | 1/1/2019 |
| Qualifications (if required): District 2 | | | |
| Mr. Barry Stang | Governor | Egbert | 7/20/2018 |
| Helena | | | 1/1/2021 |
| Qualifications (if required): District 4 | | | |
| Mr. Ralph Young | Governor | Reappointed | 7/20/2018 |
| Columbus | | | 1/1/2021 |
| Qualifications (if required): Horse racing Industry | | | |
| **Board of Pardons and Parole** | | | |
| Representative Brad Newman | Governor | Cruse | 7/16/2018 |
| Butte | | | 1/1/2023 |
| Qualifications (if required): Extensive experience in the criminal justice system | | | |
| **Board of Pharmacy** | | | |
| Mrs. Courtney Bahny | Governor | Matovich | 7/1/2018 |
| Helena | | | 7/1/2023 |
| Qualifications (if required): Registered Pharmacy Technician | | | |

## EXECUTIVE BRANCH APPOINTEES FOR JULY 2018

| Appointee | Appointed By | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Board of Pharmacy Cont.** | | | |
| Ms. Charmell M. Owens | Governor | Reappointed | 7/1/2018 |
| Missoula | | | 7/1/2023 |
| Qualifications (if required): Member from the general public | | | |
| **Board of Public Accountants** | | | |
| Mr. Michael Huotte | Governor | Reappointed | 7/1/2018 |
| Anaconda | | | 7/1/2022 |
| Qualifications (if required): Certified Public Accountant | | | |
| Mr. John W. Jacobsen | Governor | Reappointed | 7/1/2018 |
| Billings | | | 7/1/2022 |
| Qualifications (if required): Certified Public Accountant | | | |
| Ms. Kathleen VanDyke | Governor | Reappointed | 7/1/2018 |
| Bozeman | | | 7/1/2022 |
| Qualifications (if required): Public Representative | | | |
| **Board of Regents of Higher Education** | | | |
| Mr. Dalton K. Johnson | Governor | Greenfield | 7/1/2018 |
| Clancy | | | 6/30/2019 |
| Qualifications (if required): Student Regent | | | |

## EXECUTIVE BRANCH APPOINTEES FOR JULY 2018

| Appointee | Appointed By | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Director of the Department of Revenue** | | | |
| Director Eugene L. Walborn | Governor | Kadas | 7/1/2018 |
| Helena | | | 1/4/2021 |
| Qualifications (if required): None Stated | | | |
| **Historical Society Board of Trustees** | | | |
| Mr. Edwin Jasmin | Governor | Reappointed | 7/20/2018 |
| Helena | | | 7/1/2023 |
| Qualifications (if required): Public Representative | | | |
| Dr. Douglas MacDonald | Governor | Caywood | 7/20/2018 |
| Missoula | | | 7/1/2023 |
| Qualifications (if required): Archaeologist | | | |
| Mr. Thomas Minckler | Governor | Reappointed | 7/20/2018 |
| Billings | | | 7/1/2023 |
| Qualifications (if required): Public Representative | | | |
| Mr. Michael Gerard Shields | Governor | Utterback | 7/20/2018 |
| Helena | | | 7/1/2019 |
| Qualifications (if required): Public Representative | | | |

## EXECUTIVE BRANCH APPOINTEES FOR JULY 2018

| Appointee | Appointed By | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Information Technology Board** | | | |
| Mr. Timothy Bottenfield | Governor | Baldwin | 7/20/2018 |
| Helena | | | 1/1/2021 |
| Qualifications (if required): Chief Information Officer | | | |
| **Interstate Medical Licensure Compact Commission** | | | |
| Dr. James Feist | Governor | Reappointed | 7/1/2018 |
| Bozeman | | | 7/1/2021 |
| Qualifications (if required): Physician member of the Board of Medical Examiners | | | |
| Mr. Ian Marquand | Governor | Reappointed | 7/1/2018 |
| Helena | | | 7/1/2021 |
| Qualifications (if required): Board of Medical Examiners Executive Officer | | | |
| **Land Information Advisory Council** | | | |
| Mr. Timothy Bottenfield | Governor | Baldwin | 7/20/2018 |
| Helena | | | 1/1/2021 |
| Qualifications (if required): Chief Information Officer | | | |
| **Montana Information Security Advisory Council** | | | |
| Mr. Timothy Bottenfield | Governor | Baldwin | 7/20/2018 |
| Helena | | | 6/30/2019 |
| Qualifications (if required): Chief Information Officer | | | |

## EXECUTIVE BRANCH APPOINTEES FOR JULY 2018

| Appointee | Appointed By | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Noxious Weed Management Advisory Council** | | | |
| Mr. Jack Eddie<br>Dillon | Governor | Reappointed | 7/1/2018<br>6/30/2020 |
| Qualifications (if required): | Montana Weed Control Association | | |
| Ms. Margie Edsall<br>Alder | Governor | Reappointed | 7/1/2018<br>6/30/2020 |
| Qualifications (if required): | At-large member from the agriculture community | | |
| Mr. Joel Farkell<br>Brady | Governor | Reappointed | 7/1/2018<br>6/30/2020 |
| Qualifications (if required): | Consumer group | | |
| Ms. Jeanette Nordahl<br>Joliet | Governor | Reappointed | 7/1/2018<br>6/30/2020 |
| Qualifications (if required): | Recreationist, wildlife group | | |
| Mr. Brian Ostwald<br>Joliet | Governor | Reappointed | 7/1/2018<br>6/30/2020 |
| Qualifications (if required): | Eastern county representative | | |

## EXECUTIVE BRANCH APPOINTEES FOR JULY 2018

| Appointee | Appointed By | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Resource Conservation Advisory Council** | | | |
| Mr. Doug Bonsell | Governor | None Stated | 7/1/2018 |
| Ekalaka | | | 1/1/2020 |
| Qualifications (if required): Eastern Montana | | | |
| Mr. Bob Breipohl | Governor | None Stated | 7/1/2018 |
| Saco | | | 7/1/2020 |
| Qualifications (if required): Eastern Montana | | | |
| Ms. Judi Knapp | Governor | None Stated | 7/1/2018 |
| Hysham | | | 7/1/2020 |
| Qualifications (if required): South Central Montana | | | |
| Mr. O. Ramsey Offerdal | Governor | None Stated | 7/1/2018 |
| Conrad | | | 7/1/2020 |
| Qualifications (if required): North Central Montana | | | |
| Mr. Bob Schroeder | Governor | None Stated | 7/1/2018 |
| Florence | | | 7/1/2020 |
| Qualifications (if required): Western Montana | | | |
| Ms. Gayla Wortman | Governor | None Stated | 7/1/2018 |
| Cascade | | | 7/1/2020 |
| Qualifications (if required): North Central Montana | | | |

## EXECUTIVE BRANCH APPOINTEES FOR JULY 2018

| Appointee | Appointed By | Succeeds | Appointment/End Date |
|---|---|---|---|
| **State Electrical Board** | | | |
| Mr. Harry Freebourn | Governor | Reardon | 7/1/2018 |
| Butte | | | 7/1/2022 |
| Qualifications (if required): Member representing the public | | | |
| Mr. John Michael Gordon | Governor | Reappointed | 7/1/2018 |
| Butte | | | 7/1/2023 |
| Qualifications (if required): Licensed Electrician | | | |
| **State Workforce Innovation Board** | | | |
| Ms. Asta So | Governor | Hushka | 7/20/2018 |
| Missoula | | | 7/1/2019 |
| Qualifications (if required): Business Representative | | | |
| **Teacher's Retirement Board** | | | |
| Mr. Scott A. Dubbs | Governor | Reappointed | 7/1/2018 |
| Lewistown | | | 7/1/2024 |
| Qualifications (if required): Administrator and member of the system | | | |
| **Tourism Advisory Council** | | | |
| Ms. Tami Burke | Governor | Reappointed | 7/20/2018 |
| Glasgow | | | 7/1/2021 |
| Qualifications (if required): Missouri River Country Region Representative | | | |

## EXECUTIVE BRANCH APPOINTEES FOR JULY 2018

| Appointee | Appointed By | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Tourism Advisory Council Cont.** | | | |
| Ms. Cassandra Currio Luckey | Governor | Helt | 7/20/2018 |
| East Helena | | | 7/1/2020 |
| Qualifications (if required): Southwest Montana Region Representative | | | |
| Mr. Brian Sprenger | Governor | Reappointed | 7/20/2018 |
| Bozeman | | | 7/1/2021 |
| Qualifications (if required): Yellowstone Country Region Representative | | | |
| Mr. Alger Swingley | Governor | Reappointed | 7/20/2018 |
| Great Falls | | | 7/1/2021 |
| Qualifications (if required): Tribal member from the private sector | | | |
| Mr. Joseph Willauer | Governor | Holzer | 7/20/2018 |
| Butte | | | 7/1/2021 |
| Qualifications (if required): Southwest Montana Country Region Representative | | | |

## EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2018 THROUGH NOVEMBER 30, 2018

| Board/Current Position Holder | Appointed By | Term End |
|---|---|---|
| **Achieving a Better Life Experience (ABLE) Program Oversight Committee** | | |
| Ms. Katalin Kallay Patterson, Bozeman | Governor | 9/1/2018 |
| Qualifications (if required): Knowledge, skill, and experience in accounting, risk management, or investment management | | |
| **Board of Alternative Health Care** | | |
| Ms. Mary Ann Brown, Bozeman | Governor | 9/1/2018 |
| Qualifications (if required): Midwife | | |
| Ms. Ingrid Clare Lovitt-Abramson, Missoula | Governor | 9/1/2018 |
| Qualifications (if required): Public Representative | | |
| **Board of Barbers and Cosmetologists** | | |
| Mr. Wendell Petersen, Missoula | Governor | 10/1/2018 |
| Qualifications (if required): Cosmetologist | | |
| Ms. Sherry Wieckowski, Thompson Falls | Governor | 10/1/2018 |
| Qualifications (if required): Barber | | |
| Mrs. Connie Leistiko, Kalispell | Governor | 10/1/2018 |
| Qualifications (if required): General Public Representative | | |
| **Board of Medical Examiners** | | |
| Dr. Anna Earl, Chester | Governor | 9/1/2018 |
| Qualifications (if required): Doctor of Medicine | | |

**EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2018 THROUGH NOVEMBER 30, 2018**

| Board/Current Position Holder | Appointed By | Term End |
|---|---|---|
| **Board of Medical Examiners Cont.** | | |
| Dr. Nathan Thomas, Missoula | Governor | 9/1/2018 |
| Qualifications (if required): Podiatrist | | |
| Dr. Bruce Hayward, McAllister | Governor | 9/1/2018 |
| Qualifications (if required): Osteopath | | |
| **Board of Outfitters** | | |
| Mr. Matthew Allen Greenmore, Twin Bridges | Governor | 10/1/2018 |
| Qualifications (if required): Outfitter licensed to provide fishing services but not hunting services | | |
| **Board of Psychologists** | | |
| Mr. James English, Helena | Governor | 9/1/2018 |
| Qualifications (if required): Psychologist in private practice | | |
| Ms. Sara P. Boilen, Whitefish | Governor | 9/1/2018 |
| Qualifications (if required): Licensed Psychologist in Private Practice | | |
| **Burial Preservation Board** | | |
| Mr. William Big Day, Crow Agency | Governor | 9/1/2018 |
| Qualifications (if required): Crow Tribe Representative | | |
| Mr. Carl Davis, Missoula | Governor | 9/1/2018 |
| Qualifications (if required): Representative of the Montana Archaeological Association | | |

## EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2018 THROUGH NOVEMBER 30, 2018

| Board/Current Position Holder | Appointed By | Term End |
|---|---|---|
| **State Historical Preservation Review Board** | | |
| Mr. Zane Fulbright, Lewistown | Governor | 10/1/2018 |
| Qualifications (if required): History professional, historical researcher | | |
| Dr. C. Riley Auge, Missoula | Governor | 10/1/2018 |
| Qualifications (if required): History professional, historian | | |
| **State Rehabilitation Council** | | |
| Ms. Katherine M. Meier, Great Falls | Governor | 10/1/2018 |
| Qualifications (if required): Advocacy Community | | |
| **Water and Wastewater Operator's Advisory Council** | | |
| Mr. Andrew Loudermilk, Kalispell | Governor | 10/16/2018 |
| Qualifications (if required): None Stated | | |

# MONTANA ADMINISTRATIVE REGISTER

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**COREY STAPLETON**
SECRETARY OF STATE

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